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SNOHOMISH COUNTY COUNCIL

BSRE POINT WELLS, LP,)	
Appellant,)	
		11-101457 LU/VAR
vs.)	11-101461 SM
		11-101464 RC
SNOHOMISH COUNTY PLANNING)	11-101008 LDA
		11-101007 SP
AND DEVELOPMENT SERVICES,)	
Respondent.)	

VERBATIM REPORT OF RECORDED PROCEEDINGS

CLOSED RECORD APPEAL HEARING

STEPHANIE WRIGHT, CHAIR

NATE NEHRING, COUNCILMEMBER

BRIAN SULLIVAN, COUNCILMEMBER

SAM LOW, COUNCILMEMBER

OCTOBER 3, 2018



RECORDING TRANSCRIBED BY:

ELEANOR J. MITCHELL, RPR, CCR 3006



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1 EVERETT, WASHINGTON; OCTOBER 3, 2018

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4 (Recording begins at 1:30 p.m.)

5 (Proceedings begin at 1:30 p.m.)

6

7 COUNCIL CHAIR: Good afternoon. We're
8 going to call the Snohomish County Council back to
9 order for our 1:30 hearing calendar. We have one
10 closed-record ahe- -- pardon me, one closed-record
11 appeal to consider this afternoon, and I'll have the
12 clerk s- -- please read that in.

13 THE CLERK: Council considers an appeal of
14 the Snohomish County Hearing Examiner's August 3, 2018,
15 amended decision denying extension and denying
16 applications without Environmental Impact Statement in
17 the case of Point Wells Urban Center, File Nos.
18 11-101457 LU/VAR, 11-101461 SM, 11-101464 RC,
19 11-101008 LDA, and 11-101007 SP, located at
20 20500 Richmond Beach Drive Northwest, Edmonds,
21 Washington 98026.

22 COUNCIL CHAIR: Thank you. Our next item
23 is asking for statements or disclosure of ex parte
24 communications, campaign contributions, or gifts from
25 parties of record.



1 Do any council members have any disclosures to
2 make?

3 COUNCILMEMBER LOW: I --

4 COUNCIL CHAIR: Councilmember Low?

5 COUNCILMEMBER LOW: I went through the
6 list -- it was quite lengthy -- of a lot of names. I
7 did not recognize any names in that list as a -- a
8 contributor or ex parte communications or gifts from
9 parties of record. So --

10 And if I had, it wouldn't affect my vote. But
11 I haven't. So...

12 COUNCIL CHAIR: Excellent. Thank you.

13 COUNCILMEMBER SULLIVAN: Ditto.

14 COUNCILMEMBER NEHRING: Same disclosure.

15 COUNCIL CHAIR: Okay. Same disclosure.

16 Okay. With that, we will, then, now turn to a
17 staff report.

18 So good afternoon.

19 MR. STEVENS-WAJDA: Thank you, Chair
20 Wright.

21 Good afternoon. I'm Yorik Stevens-Wajda,
22 Council Staff. Good afternoon to the council.

23 We're here today on the matter of BSRE/Blue
24 Square Real Estate's Point Wells Closed-Record Appeal
25 of the Hearing Examiner's August 3, 2018, Amended



1 Decision Denying Extension and Denying Applications
2 Without Environmental Impact Statement. This is an
3 appeal under Chapter 30.72 of Snohomish County Code.
4 The council has jurisdiction over this closed-record
5 appeal under SCC 30.72.070 except to the extent BSRE
6 appeals a shoreline substantial development permit,
7 shoreline conditional use permit, or shoreline
8 variances, which must be appealed to the state's
9 shorelines hearings board under county code.

10 As a closed-record appeal hearing, under
11 30.72.110, both the issues and the record are limited
12 to the record from the hearing examiner. No new
13 evidence is allowed, and no new appeal issues may be
14 argued.

15 In 2011, BSRE submitted a series of permit
16 applications related to an urban center mixed-use
17 development at Point Wells in the unincorporated
18 southwest corner of Snohomish County. Challenges to
19 the validity of the County's Urban Center Comprehensive
20 Plan land use designation and regulations that the
21 project was vested to resulted in a period of
22 litigation from 2011 to mid-2013.

23 Since that time, the applicant, BSRE, has
24 proceeded with different aspects of design and planning
25 for the development, including several rounds of county



1 review. The project was also granted three
2 administrative extensions of the deadline for
3 expiration of the application totaling three and a half
4 years.

5 On January 9th of 2018, Snohomish County
6 Planning and Development Services advised BSRE that it
7 was proceeding with a review of application materials
8 submitted as of that date. On January 12th, BSRE
9 requested a fourth extension of the June 30, 2018,
10 application ex- -- expiration date, which was denied by
11 Planning and Development Services on January 24th.

12 On April 17, 2018, Planning and Development
13 Services issued a staff recommendation -- you can see
14 that in your packets under Exhibit N-1 -- to the
15 hearing examiner recommending denial of the urban
16 center site plan and associated permits without
17 completing an Environmental Impact Statement pursuant
18 to SCC 30.61.220. The recommendation was based on a
19 finding that the project applications substantially
20 conflict with the County's development regulations and
21 other applicable laws and regulations citing eight
22 major areas of conflict.

23 In response to new information provided by
24 BSRE after the PDS staff recommendation, PDS provided a
25 supplemental staff recommendation -- in your packets as



1 Exhibit N-2 -- to the hearing examiner continuing to
2 recommend denial without an envir- -- Environmental
3 Impact Statement. PDS did state that it would not
4 continue to rely on three of the previously cited major
5 areas of conflict for its recommendation, but that the
6 other five remain in substantial conflict in the
7 overall recommendation from the department stands
8 [verbatim].

9 The hearing examiner issued a decision denying
10 extension and denying applications without
11 Environmental Impact Statement on June 29th of this
12 year. BSRE subsequently filed a petition for
13 reconsideration of the hearing examiner's decision on
14 July 9th, requesting that the hearing examiner
15 reconsider its denial of BSRE's applications without
16 Environmental Impact Statement, its decision to deny
17 BSRE's request for an extension, its statement that an
18 appeal should be filed with the Snohomish County
19 Superior Court, and related findings of fact,
20 conclusions of law, and rulings. The petition also
21 requested clarification that the decision was issued
22 without prejudice.

23 The request was based on arguments that the
24 hearing examiner committed errors of law, that the
25 examiner's findings and conclusions are not supported



1 by the record, that new and material evidence was
2 discovered which could not have been reasonably
3 produced at the open-record hearing, and that BSRE had
4 proposed changes to the application and response -- in
5 response to deficiencies identified in the June 29th
6 decision.

7 The hearing examiner granted in part and
8 denied in part BSRE's motion for reconsideration and
9 clarification, and that motion is in your packets in
10 Exhibit R-3. The hearing examiner did grant
11 clarification that the appeal to the council may be
12 filed by an aggrieved party of record in accordance
13 with Chapter 30.72 of Snohomish County Code and that
14 BSRE's applications are denied without prejudice under
15 SCC 30.72.060, but denied a reconsideration of the
16 original June 29th decision.

17 To reflect the clarifications to the
18 jurisdiction of appeals, as well as the denial without
19 prejudice, the hearing examiner issued an amended
20 decision denying extension and denying applications
21 without Environmental Impact Statement, and that is
22 Exhibit R-4 in your packets, and that was on August 3rd
23 of 2018.

24 BSRE filed an appeal, which is in Exhibit S-1,
25 of the hearing examiner's August 3rd amended decision



1 on August 2017 -- or on August 17, 2018, requesting
 2 that the council reverse the hearing examiner's
 3 decision and deny the County's request to deny BSRE's
 4 applications without EIS, grant BSRE's request for an
 5 extension, find that the land use applications are
 6 vested to 30.34A.180 from 2007, and reverse all related
 7 findings of fact and conclusions of law.

8 You can see in the council staff reports that
 9 I've distributed that, for ease of reference, I have
 10 summarized, paraphrased, and numbered 16 distinct
 11 grounds for appeal from the BSRE appeal brief. I'll
 12 let the appellants and parties of records address those
 13 grounds in arguments, and then I'll be available to
 14 answer any questions you may have afterwards.

15 Thank you.

16 COUNCIL CHAIR: Thank you very much.

17 Before we get started with the argument, I'd
 18 like to address a few pre- -- preliminary matters.
 19 First, Party of Record Tom McCormick notified council
 20 that he objected to BSRE's tw- -- September 7, 2018,
 21 supplemental written argument. He asks the council to
 22 strike that document or allow responsive briefing o- --
 23 by parties of record. The council will do neither.

24 BSRE's supplemental written argument
 25 duplicates argument already made by BSRE in its written



1 appeal, except for in one instance. In that instance,
 2 BSRE identifies a new appeal issue -- estoppel -- and
 3 that is not properly before the council under SCC
 4 30.72.110 subsection (2), and SCC 30.72.070,
 5 subsection (2). The council will not consider that new
 6 issue.

7 There is no basis to strike BSRE's
 8 September 7, 2018, supplemental written argument or
 9 call for responsive briefing in this circumstance.

10 Second, the party of record, Tom McCormick
 11 argued a new appeal issue in his September 17, 2018,
 12 written argument that the hearing examiner erred in
 13 denying the application without prejudice. This is a
 14 new appeal issue that is not before the council under
 15 SCC 30.72.110, subsection (2), and the council will not
 16 consider it.

17 Third, Party of Record Tom McCormick included
 18 in his September 7, 2018, written argument a photo that
 19 does not appear to be part -- part of the hearing
 20 examiner record currently before the council. The
 21 council will not consider that new evidence.

22 And, finally, we understand that some of the
 23 parties of record have submitten[phonetic] -- submitted
 24 written documents to the clerk of the council. The
 25 deadline for written submissions by parties of record



1 has passed. The clerk will collect these written
2 submissions and -- in a separate folder, but they will
3 not be considered by council today.

4 Thank you.

5 MR. MAILHOT: Can I speak to that?

6 COUNCIL CHAIR: I don't -- is there a
7 clarification?

8 MR. MAILHOT: The written documents are
9 simply a copy of what was going to be spoken from the
10 podium.

11 COUNCIL CHAIR: I'm sorry. Could you come
12 up and -- I want to make sure I've heard you properly.

13 MR. MAILHOT: The written documents we
14 submitted are simply copies of what we're going to
15 speak from the podium so you guys can follow along.
16 It's not --

17 COUNCIL CHAIR: No --

18 MR. MAILHOT: -- new arguments of anything
19 like that.

20 COUNCIL CHAIR: No new.

21 Is that fine?

22 THE CLERK: [Unintelligible].

23 MR. MAILHOT: Okay.

24 THE CLERK: [Unintelligible].

25 COUNCIL CHAIR: Okay. So we will be



1 hearing the arguments. Are you okay to --

2 MR. MAILHOT: Well, s- -- some of those
3 documents also include a- -- attachments of pages from
4 the exhibits that we wanted you to have in front of you
5 as well.

6 COUNCIL CHAIR: Okay. And that's, I
7 guess, the written submission issue. So...

8 MR. MAILHOT: We're r- -- simply referring
9 to something that's already in the record. Why can't
10 we -- why can't we show that to you?

11 THE CLERK: [Unintelligible].

12 COUNCIL CHAIR: I'm sorry. I -- I
13 can't --

14 THE CLERK: [Unintelligible].

15 (Discussion held off the record.)

16 COUNCILMEMBER SULLIVAN: And, Madame
17 Chair, for the record, who are we speaking to right
18 now?

19 MR. MAILHOT: This is Tom Mailhot from
20 Richmond Beach in Shoreline.

21 COUNCILMEMBER SULLIVAN: Okay.

22 COUNCIL CHAIR: So, I'm sorry, we're going
23 to just follow along with that. We want to make sure
24 that we're not erroring in admitting anything that
25 w- -- hasn't been reviewed or isn't properly in the



1 record. So...

2 MR. MAILHOT: We're able to read things
3 from here. I don't understand why we can't give you a
4 copy of what we're reading and a copy of pages from
5 things --

6 COUNCIL CHAIR: If you're r- --

7 MR. MAILHOT: -- in the record. You can
8 throw that stuff away when we're done. We simply want
9 it in front of you so if we refer to Exhibit C-21, and
10 page 17 of C-21, and there's something critical on that
11 page, we want you to be able to see that page.

12 You can throw it away when -- when we're done.
13 We just simply want it as we're s- -- we're -- as we're
14 speaking.

15 COUNCIL CHAIR: I understand. We just
16 want to make sure we get this right. So just one
17 moment, please. Thank you.

18 (Discussion held off the record.)

19 COUNCIL CHAIR: If you guys don't mind, we
20 will pass these out, verif- -- and -- and try to make
21 sure that there's no new informa- -- or there will be
22 no information in them. So if we want to pass out the
23 testimony.

24 MR. MAILHOT: Thank you.

25 COUNCIL CHAIR: Okay. While the clerk is



1 handing those out, I'm going to cover the oral
2 arguments. We're going to start with the appellant,
3 BSRE, who will present and will have 20 minutes to
4 start. Then we will move on to the parties of record,
5 who will each be allowed three minutes. And I do
6 believe there's a sign-up sheet, but if you didn't sign
7 up and you're a party of record, we will also make sure
8 we hear your testimony today. And then, finally, the
9 appellant, BSRE, will be allowed five minutes for
10 rebuttal.

11 As mentioned by council staff, this hearing is
12 limited to the h- -- the record that -- from the
13 hearing examiner. So I ask you to confine your
14 arguments to the limited issues and the record of this
15 appeal. The council will not consider new evidence or
16 new appeal issues identified at this hearing.

17 And with that, we are going to start with the
18 appellant, BSRE. Give your name and address for the
19 record, and we'll have the clerk start -- start the
20 clock. Thank you.

21 MS. ST. ROMAIN: Good afternoon. My name
22 is Jacques St. Romain, and I represent BSRE Point Wells
23 LP, the applicant.

24 Would you like my address?

25 THE CLERK: Yes. Go ahead.



1 MS. ST. ROMAIN: Okay. 701 Fifth Avenue,
2 Suite 3300, Seattle, Washington 98104.

3 THE CLERK: Thank you.

4 MS. ST. ROMAIN: Um-hmm.

5 COUNCIL CHAIR: Thank you.

6 MS. ST. ROMAIN: Sure.

7 As you're aware, BSRE filed land use
8 applications in 2011 for the development of an urban
9 center at the Point Wells site. In 2009 and 2010, the
10 council revised its Comprehensive Plan, adopted the
11 Urban Center Code, and designated Point Wells as an
12 urban center.

13 The designation of Point Wells as an urban
14 center was challenged in court, and there was a stay
15 placed on the County from processing BSRE's
16 applications. The stay was in place until 2013, but
17 the litigation continued until 2014 when the State
18 Supreme Court upheld BSRE's vesting to the urban center
19 designation.

20 After the supreme court decision in 2014, BSRE
21 worked in conjunction with Snohomish County Planning
22 and Development Services over the course of the next
23 three to four years before PDS decided to re- --
24 recommend termination of BSRE's applications.

25 Between May 16th and May 24th, 2018, BSRE and



1 PDS participated in a hearing before the hearing
2 examiner. PDS presented its recommendation to deny
3 BSRE's request for an extension and to terminate the
4 applications without completion of the Environmental
5 Impact Statement. PDS's recommendation was based on
6 PDS's claim that BSRE's applications subse- --
7 substantially conflicted with the code in eight areas.
8 BSRE then submitted substantial revisions to the
9 applications on April 27, 2018.

10 After receiving these revisions, PDS reduced
11 the areas of substantial conflict on May 9, 2018, from
12 eight areas of conflict to five. These five areas
13 were: One, failure to show feasibility of the
14 secondary access road; two, failure to provide setbacks
15 from lower-density zones and failure to show access to
16 high-capacity transit for buildings over 90 feet;
17 three, failure to provide adequate parking; four,
18 failure to address shoreline management regulations;
19 and, five, failure to comply with code provisions
20 regarding critical areas.

21 After seven days of testimony and briefing
22 from both BSRE and PDS, the hearing examiner issued his
23 decision. He found that there were essentially three
24 areas of substantial conflict, and he terminated BSRE's
25 applications without completion of the EI- -- EIS.



1 The areas of conflict with the code that the
2 hearing examiner found were: One, failure to show that
3 the ad- -- the additional height of 90 feet is
4 necessary and desirable and failure to show access to
5 high-capacity transit; two, failure to show feasibility
6 of the secondary access road and failure to obtain a
7 deviation for the location of the buildings in the
8 upper plaza; and, three, failure to comply with code
9 provisions regarding critical areas. The hearing
10 examiner found that there was no substantial conflict
11 with the code for the setbacks from lower-density
12 zones, parking requirements, and shoreline management
13 regulations.

14 After a motion for reconsideration, the
15 hearing examiner clarified that his decision was issued
16 without prejudice. BSRE submitted an appeal of the
17 hearing examiner's decision to the council.

18 We assert that the hearing examiner erred in
19 finding any substantial conflict with the code in
20 denying BSRE's request for an extension and in finding
21 that BSRE was not vested to the 2007 version of
22 SCC 30.34A.180.

23 The first issue I'd like to address is BSRE's
24 vesting arguments. If the council finds that BSRE is
25 vested to the former version of SCC 30.34A.180, then



1 the remaining issues become moot and no longer need to
 2 be addressed. The former version of SCC 30.34A.180
 3 allows an urban center applicant to resubmit its
 4 application within six months of a hearing dec- --
 5 hearing examiner's decision denying that application
 6 without prejudice. The resubmittal would be made
 7 without a loss of vesting.

8 Here, the hearing examiner's decision was
 9 clearly made without prejudice. So if B's- -- BSRE's
 10 applications are vested to SCC 30.34A.180, then BSRE
 11 can resubmit its applications. This is especially
 12 important here because the Point Wells site is no
 13 longer designated as an urban center. So if BSRE is
 14 forced to submit an entirely new application for the
 15 development of Point Wells, BSRE will be forced to
 16 apply for an urban village development rather than an
 17 urban center development. This will have a significant
 18 impact on the type and size of the development at Point
 19 Wells.

20 The former SCC 30.34, one -- -34A.180 states:
 21 The hearing examiner may deny an urban center
 22 development application without prejudice. If denied
 23 without prejudice, the application may be reactivated
 24 under the original project number without additional
 25 filing fees or loss of project vesting if a revised



1 application is submitted within six months of the date
2 of the hearing examiner's decision. In all other
3 cases, a new application shall be required.

4 Washington has a strong vested rights doctrine
5 for land use applications. Vesting is the notion that
6 a land use application will be considered under the
7 land use statutes and ordinances in effect at the time
8 of the application submission. The purpose of the
9 vested rights doctrine is to provide a measure of
10 certainty to developers and to protect their
11 expectations against fluctuating land use policy.

12 The Snohomish County Code recognizes the scope
13 of the vesting doctrine. SCC 30.70.300 provides that a
14 development regulation to which vesting would apply
15 means those provisions of Title 30 SS- -- SCC that
16 exercise a restraining or directing influence over
17 land, including provisions that control or affect the
18 type, degree, or physical attributes of land
19 development or use.

20 While SCC 30.70.300 was not in effect at the
21 time that BSRE's applications were filed and it,
22 therefore, isn't applicable to the project, it is
23 useful to provide further guidance on what code
24 provisions would be subject to vesting and to show that
25 SCC 30.34A.180 is the type of provision to which an



1 application would be vested.

2 The former SCC 30.34A.180 is within
3 Title 30 SCC, and it exerts a directing influence over
4 the land. This statute granted developers a
5 significant property right: The right to resubmit a
6 land use application and retain its vesting. This
7 provision was specifically negotiated by BSRE and the
8 County, and it was specifically included in the code
9 because of those negotiations.

10 The County itself has consistently recognized
11 that BSRE's applications were vested to this exact code
12 provision. In PDS's October 2017 review letter, PDS
13 stat- -- stat- -- listed this code provision as one of
14 the code provisions to which BSRE was vested. PDS
15 specifically stated former SCC 30.34A.180,
16 subsection (2)(f), allows the hearing examiner to deny
17 the project without prejudice, and if that happens,
18 allows the applicant to reactivate the project.

19 In the case which challenged Point Wells
20 designation as an urban center, Woodway v. Snohomish
21 County, the County argued, and the Court held, that
22 BSRE's development rights vested to the plans and
23 regulations in place at the time it submitted its
24 permit applications. This code provision is one of
25 those regulations.



1 To be clear, the PDS staff have specifically
2 stated that BSRE is vested to this code provision.
3 There have been no arguments submitted arguing that
4 BSRE is not vested to this code provision. Even today,
5 PDS has a link to the code to which BSRE is vested, and
6 it includes this exact code provision.

7 In Snohomish County v. Pollution Control
8 Hearings Board, the State Supreme Court noted that the
9 vesting rights doctrine was created out of a concern
10 that municipalities were abusing their discretion with
11 respect to land use and zoning rules. Recent State
12 Supreme Court decisions have held that vesting rights
13 doctrine pertains to local discretion involving zoning
14 and land use ordinances.

15 Specifically, in the Pollution Control
16 Hearings Board case, the Court held that the vesting
17 rights doctrine serves to protect developers' interests
18 against abuses of local discretion. It does not apply
19 to ordinances adopted pursuant to a state mandate, such
20 as statutes and ple- -- implementing the environmental
21 act. Here, SCC 30.34A.180 is a local discretionary
22 ordinance. It was not adopted or removed because of
23 any state mandates, and it is exactly the type of
24 ordinance to which vesting applies.

25 BSRE should be permitted to resubmit its



1 application within six months without a loss of
2 vesting. The County should not now be permitted to
3 argue that BSRE is not vested to this code provision
4 where it has consistently stated that BSRE is vested to
5 this code provision.

6 In addition to the vesting issue, the hearing
7 examiner erred on a number of other findings. All of
8 these issues have been addressed in our briefing in
9 this appeal, but I'd like to highlight a few of those
10 errors.

11 First, the hearing examiner erred with respect
12 to his findings related to high-capacity transit. The
13 Urban Center Code allows buildings up to 90 feet tall.
14 However, if there is a proximity to either a
15 high-capacity transit station or route, then the
16 applicant may be entitled to a 90-foot bonus, allowing
17 for buildings up to 180 feet tall. The plain language
18 of SCC 30.34A.040 specifically allows for the dis- --
19 this additional height where the project is located
20 near or adjacent to either a high-capacity transit
21 station or a high-capacity transit route.

22 It is undisputed that Point Wells is located
23 adjacent to a high-capacity transit route. By the
24 plain language of the statute, then, BSRE should be
25 entitled to increase building height by up to 90 feet.



1 The hearing examiner erred by finding that proximity to
2 a route was not sufficient. He ignored the plain
3 language of that statute in making that finding.

4 In addition, the hearing examiner erred in
5 finding that BSRE was not entitled to the additional
6 90 feet because BSRE did not document that the
7 additional height was necessary or desirable. While
8 the specific statute related to additional height does
9 require a finding of necessity or desirability, this
10 was not before the hearing examiner at the hearing.

11 The hearing before the hearing examiner was
12 not intended to be a decision based on a complete
13 project. In fact, a review of a complete project was
14 impossible because no Environmental Impact Statement
15 had been prepared.

16 Neither BSRE, nor PDS, was trying to address
17 every single issue related to the Point Wells
18 development. Instead, PDS presented a list of
19 substantial conflicts it believed to exist, and BSRE
20 simply presented evidence to show that those
21 substantial conflicts alleged by PDS were not actually
22 substantial conflicts.

23 For this reason, neither party specifically
24 addressed necessity or desirability. Both parties
25 understood this was an issue to be addressed at a later



1 date after the EIS was completed. Because this issue
2 was not presented to the hearing examiner at the
3 hearing, and no argument on this issue was heard, the
4 hearing examiner erred in determining that the height
5 was not necessary or desirable.

6 Next, the hearing examiner erred in finding
7 that the applications were in substantial conflict with
8 critical area regulations. First, the applications
9 were not in substantial conflict because of the use of
10 the mean higher high-water line instead of the ordinary
11 high-water mark.

12 Before PDS's May 9, 2018, supplemental staff
13 recommendation, PDS did not ever state that the plans
14 had to designate the ordinary high-water mark or that
15 the shoreline setback should be determined from the
16 ordinary high-water mark. Instead, PDS mentioned the
17 ordinary high-water mark in only two comments.

18 In the October 2017 comment letter, PDS stated
19 that BSRE had used both the term "ordinary high-water
20 mark" and "mean higher high water." For clarity, PDS
21 requested that, when other revisions were done, BSRE
22 should update the pages to use the terms consistently.
23 This comment itself indicates that this was not a major
24 and substantial conflict but was just a change that
25 should be made when other changes were made. This



1 implies it was an insignificant revision that was
2 needed.

3 The May 9, 2018, supplemental staff report was
4 the first time that PDS ever advised BSRE that the
5 shoreline setback must be determined from the ordinary
6 high-water mark. Because of this late notice of this
7 error, BSRE did not have time to work with the
8 Department of Ecology prior to the hearing to determine
9 the ordinary high-water mark or to revise the plans
10 accordingly.

11 However, BSRE worked diligently to obtain this
12 information as quickly as possible. BSRE presented
13 additional evidence to the hearing examiner after the
14 conclusion of the hearing. This evidence showed that
15 the ordinary high-water mark had been determined in
16 conjunction with the Department of Ecology and that
17 changing the plans so that the setback was determined
18 from the ordinary high-water mark would have a minimal
19 impact on the site plan and on the unit count.

20 The difference in unit count would be less
21 than 6.5 percent difference. This minor change should
22 not be considered to be a substantial conflict with the
23 code, especially considering the late notice from PDS
24 of this issue.

25 The hearing examiner had the obligation to



1 consider this new evidence but failed to do so and
2 erred in finding that BSRE had -- was in substantial
3 conflict with the code. The hearing examiner seemed to
4 misunderstanding [verbatim] the timing of PDS's request
5 to BSRE regarding[phonetic] -- regarding the ordinary
6 high-water mark. Because this request was only
7 received for the first time in May of 2018, this made
8 consideration of the new evidence presented to the
9 hearing examiner even more critical.

10 PDS staff testified during the hearing that
11 applications typically go through seven or eight
12 iterations. BSRE's applications went through three.
13 According to PDS staff, this is the most complicated
14 development project that the County has ever
15 considered. So it is understandable that some errors
16 existed, and it further supports BSRE's request for an
17 extension so that errors determined by PDS in May
18 of 2018, right before the start of the hearing before
19 the hearing examiner, could be resolved.

20 Similarly, the hearing examiner erred in
21 findings related to the landslide deviation requests.
22 BSRE submitted two distinct landslide deviation
23 requests: One for the secondary access road and one
24 for the buildings in the upper plaza. The County did
25 not issue a formal decision for either of these



1 deviation requests.

2 PDS testified at the hearing that the typical
3 process for a deviation request is that the County
4 receives the request, then staff meets with the
5 applicant to discuss the deviation request and to
6 determine if any additional information is needed in
7 order to process that request.

8 BSRE was never afforded the opportunity to
9 discuss the requests or to provide additional
10 information needed by PDS. Because a decision on the
11 deviation requests had not yet been issued by PDS, the
12 hearing examiner erred in finding that a substantial
13 conflict existed related to either deviation request.

14 BSRE commissioned significant geotechnical
15 work and produced multiple geotechnical reports and
16 in-depth testimony to show that building the secondary
17 access road and the buildings in the upper plaza was
18 feasible. Findings by the hearing examiner that the
19 geotech- -- geotechnical reports were in conflict with
20 the code and that the feasibility of the secondary
21 access road and buildings was not demonstrated were
22 simply not supported by the record.

23 In sum, for all of the reasons just discussed
24 as well as all the reasons set forth in our briefing,
25 we strongly encourage you to reverse the hearing



1 examiner's decision denying BSRE's request for an
2 extension and terminating BSRE's applications without
3 completion of an Environmental Impact Statement.
4 Further, we request that you find the applications are
5 vested to the former SCC 30.34A.180.

6 Thank you for your time.

7 COUNCIL CHAIR: Thank you very much.

8 Now we will start with the parties of record,
9 and each will be allowed -- oh.

10 THE CLERK: Go ahead.

11 COUNCIL CHAIR: Three minutes to speak.
12 We do have a sign-up -- sign-up sheet.

13 THE CLERK: Um-hmm. The first person on
14 the list is Robin McClelland, followed by Jerry
15 Patterson.

16 COUNCIL CHAIR: Okay. We'll invite you up
17 to the podium in order of the sign-in sheet, and, like
18 I said, if we get to the end of the sign-up sheet and
19 you're a party of record, we can add you to the end.
20 So don't worry if you did not sign up and you're a
21 party of record.

22 So if you could give your name and address for
23 the record, you have three minutes.

24 MS. MCCLELLAND: My name is Robin
25 McClelland, and my address is 104 Northwest 180th



1 Street, Shoreline, Washington 98177.

2 COUNCIL CHAIR: Thank you.

3 MS. McCLELLAND: Dear Councilmembers, it
4 is impossible to conclude that anything other than
5 the -- anything other than the request for further
6 consideration must be denied. The location of the
7 proposed secondary access road is within a landslide
8 area -- hazard area, and a second public road is
9 required according to the Snohomish County engineering
10 design and development standards.

11 The standards state: A public road, private
12 road, or drive aisle serving more than 250 average
13 daily trips shall connect in at least two locations
14 with another public road, private road, or drive aisle
15 meeting the applicable standards for the resulting
16 traffic volume so that a dead-end road system is not
17 created.

18 A deviation from the standards constitutes an
19 ethical lapse of professional judgment that would
20 result in irreparable harm. By its own admission, BSRE
21 proposes a development that would generate over 12,000
22 average daily trips for a site with only one road
23 access, up Richmond Beach Road in Shoreline, which has
24 no jurisdiction over the proposal but would forever
25 suffer the consequences of such limited access.



1 There is no reasonable scientific or
2 engineering solution to this dilemma. Thank you.

3 COUNCIL CHAIR: Thank you.

4 THE CLERK: Jerry Patterson, speaking for
5 Tom McCormick, followed by Pearl Noreen.

6 COUNCIL CHAIR: Good afternoon. If you
7 could give your name and address for the record.

8 MR. PATTERSON: Yes. My name's Jerry
9 Patterson. I live at 20420 Richmond Beach Drive in
10 Shoreline, party of record, speaking on behalf of Tom
11 McCormick, who is out of the country. He is a party of
12 record. I believe his address is 201st Place in
13 Shoreline, Tom McCormick; is that correct?

14 FEMALE VOICE: Yes.

15 MALE VOICE: Yes.

16 MR. PATTERSON: Okay. Mr. McCormick's
17 remarks: One thing I've learned while opposing BSRE's
18 project for the last four and a half years and
19 reviewing thousands of public records is that you can't
20 trust BSRE. You can't believe what its experts say.

21 Why, of course, we'll make sure that we'll get
22 on-site high-capacity transit at Point Wells but just
23 not right away. BSRE knows it cannot guarantee this.
24 They don't control Sound Transit or Burlington
25 Northern.



1 Why, of course, we'll design things to ensure
2 that the landsid- -- -slide hazard risks are dealt
3 with, but that's for later in the project. Our project
4 can always be approved subject to conditions.

5 We are motivated to resolve all issues raised
6 by PDS, and we will work diligently to do so if just
7 given a little more time. What about the last seven
8 years? If BSRE had been diligent, would we be here
9 today?

10 In a twenty-five- -- 2015 report, they said
11 the provision of a secondary access road to the site to
12 provide for public safety and welfare is not warranted.
13 Imagine: Six thousand residents, thousands of workers,
14 and visitors, and BSRE said a second road is not
15 warranted.

16 For the last seven years, we didn't know that
17 we were doing anything wrong regarding how we
18 determined the 150-foot and other shoreline buffers on
19 our site plan. So says a developer of a billion-dollar
20 project spending over \$10 million on the supposed best
21 advice money can buy. The law has been crystal clear
22 since 2007.

23 We will confirm later in the process that the
24 liquefaction risk can be mitigated to make the -- the
25 site suitable for development. I don't believe them or



1 trust them.

2 The hearing examiner correctly concluded that
3 BSRE has not been diligent, and its applications
4 substantially conflict with county code: buildings too
5 tall, buildings located too close to the shoreline,
6 building of a secondary road access but fail to satisfy
7 landsh- -- -slide hazard rules, a faulty critical areas
8 report, and BSRE's failure to show the site as even
9 suitable for development considering that much of the
10 site is susceptible to high liquefaction, a major
11 public issue.

12 The conflicts are so substantial that it would
13 waste time and resources to let BSRE keep doing what
14 it's doing. And with so many code conflicts, we really
15 have no idea what a code-compliant project would
16 actually look like; it's fruitless trying to summarize
17 the unknown.

18 I trust that you will conclude that the
19 hearing examiner was correct in his decision denying
20 BSRE's applications and refusing to extend BSRE's
21 application expiration date. Thank you. Mr. Tom
22 McCormick.

23 COUNCIL CHAIR: Thank you.

24 THE CLERK: Pearl Noreen followed by
25 Dennis Casper.



1 COUNCIL CHAIR: Good afternoon.

2 MS. NOREEN: Good afternoon, Council. I'm
3 Pearl Noreen. Address, 2625 Northwest 205th,
4 Shoreline, Washington 98177.

5 COUNCIL CHAIR: Thank you.

6 MS. NOREEN: I'm a party of record, and my
7 comments relate to the pages 13 through 15 of BSRE's
8 appeal.

9 BSRE appeals the hearing ins- -- examiner's
10 conclusion that the maximum building height at Point
11 Wells is 90 feet. It claims that it qualifies for an
12 additional 90 feet because its project is located near
13 a high-capacity transit route. The examiner correctly
14 rejected that argument because there is no transit
15 access at Point Wells.

16 If I told you that I am looking for a new
17 apartment located near a light rail route or a bus
18 rapid transit route or a train route, what am I
19 conveying? The answer is obvious: I'm looking for an
20 apartment within walking distance of a place where I
21 can board high-capacity transit.

22 When normal people say their property is
23 located near a transit route, they mean that they have
24 transit access nearby. That's what the hearing
25 examiner concluded.



1 Please look at page 2 of my handout containing
2 the code section on building heights. The highlighted
3 words say that an additional 90 feet may be approved
4 when the project is located near a high-capacity
5 transit route or station.

6 BSRE's spin on the highlighted words is that
7 since Sound Transit's Everett-to-Seattle route uses
8 train tracks that bisect Point Wells, the loc- -- the
9 site is located near a high-capacity transit route,
10 though the train doesn't stop there. The hearing
11 examiner rejected that spin: Access is required, not
12 mere proximity.

13 BSRE seems to think that its interpretation of
14 the code -- one that doesn't require access -- is the
15 only one that makes sense. The examiner concluded
16 otherwise: The correct and obvious interpretation is
17 that to qualify for an additional 90 feet, the project
18 must either be near an accessible bus rapid transit
19 route or light rail route; number two, or be near a
20 train station. There must be access.

21 Please look again at page 2 of my handout. If
22 all that was required were near -- mere proximity to a
23 train route without access, there would have been no
24 reason for council to have included the word "station"
25 in the code for all train stations are located on a



1 train route. The word "station" must there be for a
2 reason [verbatim]. There is only one way that words
3 describe route or a station; each have meaning.

4 To get an additional 90 feet, the project must
5 be near a bus rapid transit. Thank you.

6 And please affirm the hearing examiner's
7 denial of the BSRE application. Thank you.

8 COUNCIL CHAIR: Thank you.

9 THE CLERK: Dennis Casper, followed by
10 Barbara Twaddell.

11 COUNCIL CHAIR: Good afternoon. If you'd
12 give your name and address for the record.

13 MR. CASPER: Good afternoon.

14 COUNCIL CHAIR: You have three minutes.

15 MR. CASPER: Councilmembers, my name is
16 Dennis Casper, and I -- my family lives at one- --
17 20235 Richmond Beach Drive Northwest. We've been there
18 for a year and a half, and I don't seem to remember the
19 address well.

20 This is not the right site for this project,
21 and the hearing examiner's decision illustrates this,
22 not just because BSRE failed to use due diligence
23 during the last seven years and three extensions, but,
24 after the seven years, BSRE still does not comply with
25 the Snohomish County Code. And I'll offer the council



1 one example related to pages 16 to 17 of BSRE's appeal.

2 In its appeal, BSRE contends that, even if
3 access to the Sounder train at Point Wells is required
4 to qualify for an additional 90 feet of height bonus,
5 its plans for a future train station satisfy the code,
6 SCC 30.34A.040. BSRE hopes, eventually, to get a Sound
7 Transit and Burlington Northern [verbatim] to approve a
8 Point Wells station after enough people move there. It
9 argues that its plans ought to be good enough to
10 qualify for the extra 90 feet.

11 What I wish to know is: Where, in the code,
12 does it state that a developer's plans for a future
13 station are code compliant? Please review the code
14 section included with the speaker just before me, her
15 remarks. I don't see the word "planned" anywhere
16 there, and I don't see the phrase "near a planned route
17 or station."

18 A project qualifies for the extra 90 feet only
19 if near an existing train station. If intended that a
20 developer could qualify for the 90-foot height bonus by
21 simply having some so-called plans, the code would say
22 that. And it doesn't.

23 The absence of the word "planned" is
24 especially significant because the -- because other
25 code sections like 30.34A, dash -- dot, 085, for



1 example, use the words "existing" or "planned" when
2 referring to high-capacity transit, making it clear
3 that, for the purposes of those sections, a planned
4 station will suffice, and not just an existing station.
5 But 30.34A.040 does not.

6 At a minimum, in the last seven years, BSRE --
7 BSRE could have executed a memorandum of in- -- of
8 understanding with both Burlington Northern and Sound
9 Transit, but they did not. Moreover, it would seem
10 reasonable that a plan for a rail station at Point
11 Wells would include a parking plan for non-Point Wells
12 commuters and land acquisitions for geotechnical
13 protections for known landslide hazards for the north
14 end of the site where the rail station would be. None
15 of these exist; there is no plan.

16 But even if a planned station could qualify
17 for the 90-foot height bonus, BSRE's so-called plans
18 are irrelevant. Sound Transit's approval is what
19 matters, and Sound Transit would need to adopt a
20 definite plan for a station at Point Wells just like it
21 did for the stations at Lynnwood and Shoreline. There
22 are no such plans for Point Wells; there is no MOU.

23 The examiner gave short treatment to BSRE's
24 argument that its plans ought to suffice, saying, at
25 paragraph C.35: Based on the record, any claim that



1 Sound Transit will operate a commuter rail stop --

2 COUNCIL CHAIR: Excuse me.

3 MR. CASPER: -- at Point Wells is
4 speculative at best.

5 So thank you to the hearing.

6 COUNCIL CHAIR: I'm sorry. Your time is
7 up, sir.

8 MR. CASPER: Yes. Thank you to the
9 council for this hearing.

10 COUNCIL CHAIR: Thank you.

11 THE CLERK: Barbara Twaddell, followed by
12 Robert Hauck.

13 COUNCIL CHAIR: Thank you.

14 MS. TWADDELL: Hi.

15 COUNCIL CHAIR: Good afternoon.

16 MS. TWADDELL: My name is Barbara
17 Twaddell. I live at 1337 Northwest 201st Street in
18 Shoreline, 98177.

19 COUNCIL CHAIR: Thank you.

20 MS. TWADDELL: Hello, Councilmembers. I
21 am a party of record. My comments relate to pages 17
22 and 18 of BSRE's appeal.

23 BSRE will try anything to qualify for the
24 90-foot height bonus. Its appeal says that it might
25 employ water taxis to satisfy the high-capacity transit



1 requirement. There are no water taxis there now, nor
2 is it likely there ever will be.

3 As the last speaker said, the high-capacity
4 transit must be there now. The code does not contain
5 the word "planned." And even if some sort of planned
6 water taxi service could suffice, BSRE presented no
7 evidence that its so-called plans have been approved by
8 anyone. The hearing examiner easily dismissed the
9 water taxi idea, saying that little to no evidence was
10 presented beyond a high-level conclusion it was a
11 conceptual fallback plan without details.

12 Now, let me discuss a more fundamental reason
13 why BSRE's water taxi idea plan fails. BSRE assumes
14 that water taxis are considered high-capacity transit,
15 but that's not the case. The County's 2010
16 Comprehensive Plan, page E-8, defines high-capacity
17 transit as any transit technology that operates on a
18 separate right of way and functions to move large
19 numbers of passengers at high speeds, such as bus ways,
20 light rail, and commuter rail.

21 Water taxis are not mentioned. Water taxis
22 are not high-capacity transit. They certainly do not
23 operate on a separate right of way, nor are water taxis
24 considered high-capacity transit under the 2010 version
25 of Code Section 30.34A.085, which includes a



1 high-capacity transit-only route [verbatim] such as
 2 light rail or commuter rail lines or regional express
 3 bus routes or transit corridors that contain multiple
 4 bus routes. There's no mention of water taxis; they
 5 are not high-capacity transit. In contrast, today's
 6 code has a definition of high-capacity transit in
 7 Sections 30.91H.108 that includes passenger-only
 8 ferries designed to carry high volumes of passengers.

9 Even if s- -- BSRE could rely on to- --
 10 today's code, which it cannot, BSRE has provided no
 11 details about whether its conceptual water taxis
 12 constitute passenger-only ferries or whether its water
 13 taxis would carry the requisite high volume of
 14 passengers.

15 Because water taxis are not high-capacity
 16 transit and are totally speculative and a conceptual
 17 fallback plan for which approvals have not been
 18 secured, nor are they likely to be secured, the hearing
 19 examiner was correct including [sic] that BSRE's water
 20 taxi concept failed to satisfy the high-capacity
 21 transit requirement to qualify for the 90-foot building
 22 height bonus.

23 Please affirm the hearing examiner's denial of
 24 BSRE's applications. Twenty-one of BSRE's 46 proposed
 25 buildings are taller than 90 feet, and that's a



1 substantial conflict with county code. Thank you.

2 COUNCIL CHAIR: Thank you.

3 THE CLERK: Robert Hauck followed by Karen
4 Briggs.

5 COUNCIL CHAIR: Good afternoon.

6 MR. HAUCK: Good afternoon,
7 Councilmembers. I'm Robert Hauck. My address is
8 1321 Northwest 198th Street, Shoreline, Washington.
9 I've resided there for 46 years and feel that I know
10 the spirit of our community.

11 I am a party of record. My comments relate to
12 page 19 of BSRE's appeal. Please refer to the code
13 section given by a previous speaker. There's a second
14 requirement to qualify for the Code's 90-foot height
15 bonus: The additional height must be documented to be
16 necessary or desirable. I submit that BSRE fails to
17 satisfy that requirement. As the examiner said, in
18 paragraph C.37, BSRE's bare proposal for buildings
19 twice the permitted height does not demonstrate either
20 necessity, nor does-- desirability.

21 The additional height must be, quote, for some
22 reason other than the applicant's desire. The record
23 lacks any evidence that the additional height is
24 necessary or desirable from a public aesthetic,
25 planning, or transportation standpoint, end quote.



1 BSRE objects, saying that the examiner should
2 have never raised the necessary or desirable issue
3 because it was not addressed by the parties. One of
4 the primary responsibilities of judges and hearing
5 examiners is to interpret the law and then apply it to
6 the facts. It would have been an error for the
7 examiner not to do so.

8 BSRE next argues that the examiner should not
9 have addressed the necessary or desirable issue until
10 after a view analysis in the project EIS had been
11 completed. The code doesn't say that an E- -- EIS is a
12 precondition to determining whether a height increase
13 is necessary or desirable. It's hard to imagine that a
14 view analysis would dictate that the proposed buildings
15 at Point Wells should be taller.

16 Lastly, BSRE argues that, since neither party
17 addressed whether the additional height is necessary or
18 desirable, the record is silent on the issue. Not
19 true. In 2015, BSRE submitted an alternate site plan
20 with all buildings no taller than 90 feet. Its
21 alternate site plan shows that buildings taller than
22 90 feet were not necessary.

23 Please look at pages 2 to 3 of my handout,
24 including excerpts from Exhibit I-222, a document that
25 Mr. McCormick submitted, to the design review board on



1 March 13th. Page 2 is the alternate site plan
 2 submitted by BSRE in 2015, and page 3 is an
 3 accompanying table --

4 COUNCIL CHAIR: Your --

5 MR. HAUCK: -- submitted --

6 COUNCIL CHAIR: Your time's up, sir. I'm
 7 sorry. I do have to ask you to wrap up.

8 MR. HAUCK: Thank you very much. And
 9 please support the hearing examiner's denial of their
 10 application.

11 COUNCIL CHAIR: Thank you.

12 THE CLERK: Karen Briggs followed by Jack
 13 Malek.

14 MS. BRIGGS: Good afternoon.

15 COUNCIL CHAIR: Hi.

16 MS. BRIGGS: My name is Karen Briggs, and
 17 I live at 20450 Richmond Beach Drive Northwest,
 18 Woodway, Washington.

19 COUNCIL CHAIR: Thank you.

20 MS. BRIGGS: Hello, Councilmembers. I am
 21 a party of record. I am a Snohomish County resident,
 22 and I'm tired of seeing my tax dollars wasted on delay
 23 after delay. My comments relate to page 6 and 7 of
 24 BSRE's appeal. BSRE submitted its applications in
 25 2011, and it claims that it is vested to the zoning and



1 land use ordinances in effect at that time.

2 Under County Code Section 30.34A.040(2)(a),
3 there is a very low height limit for buildings proposed
4 to be located within 180 feet of a neighboring
5 residential property that is zoned R-9,600. For
6 example, a building that's 80 feet from the adjacent
7 property cannot be taller than 40 feet.

8 The hearing examiner concluded that this code
9 section applies to the buildings in BSRE's proposed
10 urban plaza. He stated, in paragraph F.49, quote: All
11 of the buildings in the urban plaza exceed the height
12 limits, quote -- end quote.

13 BSRE appeals saying the code section should
14 not apply because the adjacent property is zoned
15 R-14,500. However, nine- -- R-9,600 is the least dense
16 zoning that the code section applies to because, at the
17 time BSRE filed its urban center application in 2011,
18 the property adjacent to the urban plaza was located in
19 unincorporated Snohomish County and was zoned R-9,600.

20 Only years later, the adjacent property was
21 annexed by Woodway, and the zoning changed to R-14,500.
22 BSRE claims its vesting to the zone and land use
23 ordinances in effect at the time it submitted its
24 applications in 2011, and as a result, that adjacent
25 residential property in 2011 was zoned R-9,600 at the



1 time they applied. So that zoning is the applicable
2 zoning for purposes of reviewing BSRE's applications
3 and determining BSRE's compliance with the county code.

4 And as I mentioned, there are very strict
5 height limits in Code Section 30.34A.040(2)a) that
6 apply when the adjacent property is zoned R-9,600. And
7 the residential property adjacent to the proposed urban
8 plaza was zoned 9,600 -- R-9,600 in 2011, the date that
9 BSRE's vested, and the code's very strict height limits
10 apply.

11 So, the hearing examiner did, in fact,
12 correctly find that the Code Section 30.34A.040(2)(a)
13 applies, and that all of the buildings in the urban
14 plaza exceed the height limits. And I request that you
15 deny BSRE's appeal and that you affirm the hearing
16 examiner's findings in paragraph forty- -- F.44, 45,
17 46, 47, 48. I don't want to see my tax dollars paid
18 for my delays. Thank you.

19 COUNCIL CHAIR: Thank you.

20 THE CLERK: Jack Malek, followed by John
21 John.

22 COUNCIL CHAIR: Good afternoon.

23 MR. MALEK: Good afternoon.

24 COUNCIL CHAIR: If you could give your
25 name address for the record. You have three minutes.



1 MR. MALEK: My name is Jack Malek. I'm a
2 resident of Richmond Beach, Shoreline -- 20224 23rd
3 Place Northwest, Shoreline -- Shoreline, Washington.

4 COUNCIL CHAIR: Thank you.

5 MR. MALEK: Hello, Councilmembers. I am a
6 party of record. My comments relate to pages 27 to 30
7 of BSRE's appeal.

8 Under Washington law, a developer vests to
9 certain land use control regulations in effect at the
10 time the developer submits its applications. Land use
11 control regulations are ones that control zoning,
12 building heights, minimum or maximum density, required
13 setbacks, and so on.

14 In its appeal, BSRE argues that it vested to
15 Code Section 30.34A.180(2)(f), which existed in 2011,
16 but which has not since -- or, excuse me, but which has
17 since been repealed. The section authorizes the
18 hearing examiner to deny an urban center application
19 without prejudice and permits a developer to then
20 reapply as an urban center without loss of vesting.
21 The hearing examiner correctly rejects BSRE's argument,
22 concluding that, while vesting may apply to -- to land
23 use control ordinances, it doesn't apply to the hearing
24 examiner's jurisdiction and authority.

25 BSRE has cited no legal authority directly on



1 point to support its argument that the vested rights
 2 doctrine applies to a procedural rule dealing with a
 3 hearing examiner's jurisdiction and authority. A
 4 procedural rule is not a land use control regulation to
 5 which vesting may apply, and the fact the BSRE may have
 6 drafted the code's text, and lobbied for it, does not
 7 make it any less procedural rule for vesting does not
 8 apply [verbatim]. BSRE's appeal is without merit.
 9 BSRE wants to resurrect a repealed code section by
 10 claiming a vested right, and then use the examiner's
 11 without-prejudice ruling to reapply as an urban center
 12 without loss of vesting.

13 Please reject both prongs of BSRE's scheme by
 14 doing two things: One, affirm that BSRE obtains no
 15 rights under the repealed procedure -- procedural code
 16 section, and, two, reverse the examiner's
 17 without-prejudice ruling and instead deny BSRE's
 18 application outright. Alternatively, I ask that you
 19 remand the matter to the hearing examiner with
 20 directions to re-examine whether it's without-prejudice
 21 ruling is appropriate under the circumstances I have
 22 been discussing.

23 And I'd like to add a -- just a little
 24 something of my own as well. Being a real estate
 25 professional in the area and having lived there for



1 17 years, raising my son and my -- my family, vesting
2 doctrine, it's really critical. I work with a lot of
3 new construction developers. It's really important
4 that both the municipalities give that certainty to
5 developers and the developers respect that vesting
6 doctrine.

7 In this instance, I really feel the vesting
8 doctrine is being misused in a Wall Street-inspired
9 pump-and-dump scheme. I believe they're seeking the
10 highest density possible to seek the highest price
11 possible, and then they're dumping this responsibility,
12 which they've very ill-defined on the feasibility, for
13 the buyer or the community, and it's the community that
14 takes the impacts without jurisdiction over this area.

15 Thank you very much for listening.

16 COUNCIL CHAIR: Thank you.

17 THE CLERK: John John, followed by
18 Domenick Dellino.

19 MR. JOHN: Good afternoon, Councilmembers.
20 My name is John John. My residence is 18001
21 17th Avenue Northwest, Shoreline, Washington 98177. I
22 am a party of record, and my comments relate to pages 4
23 to 5 of BSRE's September 7, 2018, supplemental filing.

24 As we've heard earlier this afternoon from
25 BSRE's attorney, BSRE asserts that it is vested to the



1 repealed procedural rule giving the hearing examiner
2 the authority to deny -- to deny urban center
3 application without prejudice and giving the applicant
4 the right to reapply without loss of vesting. The
5 examiner concluded he lacked authority to use this
6 repealed procedural rule in denying BSRE's
7 applications, so B- -- so BSRE must reapply under
8 today's zoning and development regulations.

9 BSRE, of course, doesn't like that result. So
10 it is not surprising that BSRE grasps for one more
11 straw in its September 7th supplemental filing, falsely
12 alleging, at page 4, line 12, that the County has
13 consistently said that BSRE's applications are vested
14 to the repealed procedural rule so that the examiner
15 sh- -- should have used that rule in denying BSRE's
16 applications.

17 BSRE is misleading you. It is -- it is
18 asserting a conclusion without any documentation or
19 support in fact. Neither PDS, nor anyone else has ever
20 said such a thing orally or in writing, let alone
21 consistently. So when there's -- so if there were,
22 they would have produced documents that said that.
23 There are no documents in the record that s- -- that
24 support that statement.

25 PDS is charged with reviewing BSRE's project



1 for compliance with county code provisions like
2 building height, setbacks, parking, and so on. As
3 stated on page 79 of PDS' October 17th review
4 completion letter, its review was per the code in
5 effect when BSRE submitted its urban center
6 application. That is March 4, 2011, version of the
7 code [verbatim].

8 In support of its convoluted contention, BSRE
9 first cites PDS' statement from page 76; namely, that
10 from -- that PDS' review of BSRE's applications is per
11 the 2011 version of the code. This is -- this is
12 apples and oranges. A statement about what rules PDS
13 uses to evaluate BSRE's code compliance has nothing
14 whatsoever to do with whether BSRE is vested in the
15 repealed procedural rule conferring the hearing
16 examiner authority. There is no reason that PDS would
17 ever proffer an opinion on the subject its jurisdiction
18 [verbatim] in reviewing applications for code
19 compliance.

20 Next, BSRE points to how PDS' review
21 completion letter summarized and reproduced the entire
22 2011 Urban Center Code, including the repealed
23 procedural rule. This, BSRE contends and -- is a
24 cobbling together of unconnected snippets and is proof
25 that PDS has, quote, consistently, unquote, told BSRE



1 that it is vested to the repealed procedural rule.

2 COUNCIL CHAIR: I'm sorry. Your time's up
3 sir.

4 MR. JOHN: Okay. Thank you for your time,
5 and we urge you to support the hearing examiner's
6 decision to deny the application.

7 COUNCIL CHAIR: Thank you.

8 THE CLERK: Domenick Dellino, followed by
9 Edith Loyer Nelson.

10 COUNCIL CHAIR: Good afternoon. If you
11 can give your name --

12 MR. DELLINO: Good afternoon. My name
13 is --

14 COUNCIL CHAIR: -- and address for the
15 record.

16 MR. DELLINO: -- Domenick Dellino, and I
17 live at 905 Northwest Richmond Beach Road in Shoreline,
18 98177.

19 COUNCIL CHAIR: Thank you.

20 MR. DELLINO: So good afternoon,
21 Councilmembers. I'm a party of record, and my comments
22 ref- -- relate to pages 23 through 27 of BSRE's appeal.
23 I'll paraphrase some of the prepared statement out of
24 respect for your time. I'm going to talk about BSRE's
25 lack of diligence, specifically, its dilatorious --



1 dilatory tactics with the second access road.

2 Citing BSRE's lack of diligence and
3 substantial code conflicts, the examiner was indeed
4 correct in refusing to extend BSRE's June 30, 2018,
5 application expiration date. As you know, BSRE appeals
6 this.

7 BSRE submitted its application -- applications
8 in 2011 without a second access road. BSRE -- BSRE
9 knew that the County -- what the County rules required.
10 It knew that, if more than 250 average daily trips are
11 generated, a second road is required. Yet, although
12 its development was projected to generate over 10,000
13 average daily trips, it ignored the second access road
14 requirement.

15 Three years later, the 2014 EIS summary --
16 scoping summary alerted BSRE that the EIS must evaluate
17 the potential environmental impacts of providing a
18 secondary access road. But by the -- by yearend 2014,
19 there were still no plans for a second road.

20 The following year, instead of submitting
21 plans for a second road, BSRE tried to wiggle out of
22 the requirement. You have in front of you what it says
23 in the 2015 report, Exhibit twenty- -- C-21, which I
24 won't read in its entirety, but suffice it to say that
25 the claim that -- its claim that despite the



1 6,000 residents and thousands of visitors, BSRE deemed
2 the road -- and capriciously, in my opinion -- as
3 unwarranted.

4 Yet, that single road, Richmond Beach Drive,
5 is a narrow, winding, two-lane road through a
6 residential neighborhood subject to obstruction by
7 fallen trees. PDS promptly pushed back, telling BSRE
8 that -- that the County does not concur with BSRE's
9 conclusion that a second access road is not warranted,
10 and, in 2016, PDS spoke again, telling BSRE in no
11 uncertain terms that a second road was required.

12 Finally, more than six years late, BSRE
13 submitted plans for a second road in 2017, albeit
14 incomplete and noncompliant plans. That is not
15 diligence. That's dilatory. And simply a further
16 delay tactic. Thus, BSRE has failed to show that its
17 second access satisfied the safety and other
18 requirements of the County's landslide requ- --
19 regulations. The hearing examiner concluded, at
20 page 26 of his decision, that substantial conflicts
21 with county code remain regarding the secondary access
22 road.

23 And BSRE has other problems. They don't even
24 own all the property necessary to build the second
25 access road.



1 Please affirm the hearing examiner's decision
2 denying BSRE's applications and refusing to extend the
3 June 30, 2000, application expiration date. Thank you
4 for your time.

5 COUNCIL CHAIR: Thank you.

6 THE CLERK: Edith Loyer Nelson, followed
7 by Janice Eckmann.

8 COUNCIL CHAIR: Good afternoon.

9 MS. NELSON: Good afternoon.

10 COUNCIL CHAIR: If you could give your
11 name and address for the record, you have three
12 minutes.

13 MS. NELSON: I'm Edith Loyer Nelson.
14 I'm -- address is 2020 Northwest 195th, Shoreline,
15 Washington, one block off Richmond Beach Road. I'm a
16 party for the record. My comments related to pages 8
17 to 12 of BSRE's appeal.

18 Under county code, a developer of Shoreline
19 property must ascertain its ordinary high-water mark.
20 This must be done before preparing site plans and
21 application materials. It's used to determine the
22 150-foot and other shoreline buffers within which
23 buildings are prohibited or restricted.

24 The hearing examiner concluded, at
25 paragraph C.16, that BSRE made no effort to ascertain



1 the ordinary high-water mark until March 2018. He said
2 that waiting seven years to determine the area in which
3 one can lawfully build is a failure of diligence at the
4 very least.

5 BSRE disagrees. It wants you to believe that,
6 despite failing to determine the ordinary high-water
7 mark for seven years, it was diligent. No, if it were
8 diligent, BSRE would have located the ordinary
9 high-water mark before 2011 when it submitted its
10 applications.

11 You know, BSRE's consultants actually visited
12 the site in 2010, took photos showing vegetation of the
13 shoreline, the telltale indicor- -- in- -- in- --
14 indicator of the hi- -- ordinary high-water mark. We
15 know BSRE knew what to do because they had located it
16 for the streams on the site.

17 Making matters worse, BSRE improperly depicted
18 an ordinary high-water mark on the site plans submitted
19 in 2011. The line improperly depicted was actually a
20 type of average high tide, called the mean higher
21 high-water elevation from published tidal tables. For
22 some on the site, the line BSRE improperly depicted was
23 much closer to the water than the truly correct
24 ordinary high-water mark. That led to BSRE
25 misrepresenting the 150-foot and other shoreline



1 buffers.

2 As BSRE admitted in its motion for
3 reconsideration, for much of the southern portion of
4 the site, the true and correct buffers are at least
5 50 feet ha- -- farther inland than shown on BSRE's site
6 plans. As a result, at least six of BSRE's proposed
7 buildings are located within the restricted buffer
8 zones.

9 And there's one more thing. Over the years,
10 PDS twice asked BSRE to explain why, in some places on
11 its site plans, it used the phrase the phrase "ordinary
12 high-water mark" and other places it used the phrase
13 "mean higher high water." Despite PDS's questioning,
14 BSRE didn't fix things. Despite the prompting, it made
15 no effort to ascertain the ordinary high-water mark.
16 Instead, BSRE incredulously resubmitted its site plans
17 to PDS still with a misrepresented ordinary high-water
18 mark and shoreline buffers.

19 BSRE has been far from diligent, and please
20 affirm the hearing examiner's denial of its
21 applicative -- their applications and the refusal to
22 extend the period. Thank you.

23 COUNCIL CHAIR: Thank you.

24 THE CLERK: Janice Eckmann, followed by
25 George Mayer.



1 COUNCIL CHAIR: Good afternoon. If you
2 could give your name and address for the record, you
3 have three minutes.

4 MS. ECKMANN: Okay. Thank you. I'm
5 Janice Eckmann. I live at 19123 Richmond Beach Drive
6 Northwest, and I've lived there 23 years.

7 Hello, Councilmembers. I am a party of
8 record. My comments relate to pages 8 through 11 of
9 BSRE's appeal.

10 BSRE argues that the first time the County
11 claimed BSRE was deficient because the shoreline buffer
12 was not determined based on ordinary high-water mark
13 was in PDS's May 9, 2018, supplemental staff
14 recommendation. That's like saying -- a person who has
15 knowingly submitted incorrect reports for seven years
16 saying: That's my first -- the first time my boss told
17 me I was doing anything wrong.

18 PDS caught BSRE's wrongdoing when it
19 discovered inconsistencies in the revised state -- site
20 plans that BSRE submitted on April 27, 2018. Several
21 sheets of the presubmitted site plans depicted two
22 separate lines. One line was the ordinary high-water
23 mark, with a notation saying that it was located
24 March 2018, and the other line was the mean higher
25 high-water line.



1 Despite having located the ordinary high-water
2 mark, BSRE's site plans continued to measure the
3 shoreline buffers from the mean higher high-water line,
4 making it appear that all proposed buildings were
5 outside the restricted buffer zone, when at least six
6 were not.

7 An ethical developer would have never
8 resubmitted his site plans without -- with such knowing
9 repre- -- misrepresentations. As an excuse, BSRE says
10 that, after located the ordinary high-water mark in
11 March, it was unable to rev- -- revise its site plans
12 prior to resubmitting them on April 27th. And that's
13 hard to believe.

14 BSRE is on record as saying the work would
15 only take two to four weeks. You can read that on
16 page 11 of its appeal. It had more than enough time
17 since locating the ordinary high-water mark in March to
18 get the job done.

19 No matter what, BSRE could have at least
20 submitted rough schedules or other information to PDS
21 to inform PDS that it was proceeding to correct things.
22 An honest developmer[phonetic] -- developer would
23 either have postponed its su- -- resubmission until the
24 revisions were made or gone ahead and resubmitted the
25 site plans but accompanied with it sketches and a



1 letter to PDS explaining that it had located the
2 high-water mark but needed more time to revise the site
3 plans to fix the buffer lines. And it could have told
4 PDS but a number of its proposed buildings would likely
5 need to be relocated or restricted because they might
6 be in the re- -- restricted buffer zone.

7 All BSRE -- I'm all BSRE had to do was be
8 honest with PDS. Instead, BSRE said nothing. They
9 resubmitted defective plans that misrepresented the
10 buffers.

11 Please affirm the hearing examiner's denial of
12 BSRE applications and please affirm his refusal to
13 extend BSRE's appli- -- application expiration date.
14 Thank you.

15 COUNCIL CHAIR: Thank you.

16 THE CLERK: George Mayer, followed by
17 Tracy Tallman.

18 COUNCIL CHAIR: Good afternoon, sir. If
19 you could give your name and address for the record.

20 MR. MAYER: Okay. George Mayer. I live
21 at 1613 Northwest 191st Street in Richmond Beach, and
22 I'm a party of record. I want to hone in on two prior
23 statements that had to do with the high-water mark --
24 the ordinary high-water mark.

25 On page 10 of its appeal, BSRE says that, in



1 order to determine the ordinary high-water mark, a
2 consultant had to have scheduled a meeting with the
3 Department of Ecology of the state at the site, and
4 that occurred on June 26, 2018.

5 And BSRE has been misleading you. The
6 June 26th Ecology site meeting was not to determine the
7 ordinary high-water mark; rather, it was to have
8 Ecology verify the ordinary high-water mark that BSRE's
9 expert field biologist had located three months earlier
10 in March of this year.

11 The law does not require Ecology's
12 verification, but it's commonly sought. The law does
13 require that the ordinary high-water mark and shoreline
14 buffers be correctly depicted on a project's site
15 plans, and BSRE failed to do this consistently. It
16 submitted faulty site plans in 2011, and again in 2017,
17 and yet again in 2018.

18 So in two- -- after seven years in -- of
19 inaction, BSRE finally located the ordinary high-water
20 mark in March and waited three months. And the
21 consultant met with Ecology on -- on June 26th to
22 verify the mark that had been located in March, so
23 three months earlier.

24 During this meeting in June, stakes were
25 placed in the ground at various spots to identify



1 the ordinary high-water mark. Photos were taken. It
2 was agreed that the consultant would send a follow-up
3 report to Ecology with details for the GPS coordinates
4 for the stakes and other information. Ecology would
5 then review the report before deciding whether to
6 verify the ordinary high-water mark.

7 As of Monday -- and in fact, as of today --
8 three months since the site meeting, apparently Ecology
9 hasn't received the report. And perhaps BSRE is
10 concerned that the report might show that the ordinary
11 high-water mark is 20 to 30 feet further inland in
12 places compared to the mark its consultant located in
13 March.

14 I'll let you read the rest of it in my
15 submitted statement, and I would like the council to
16 please affirm the hearing examiner's denial of BSRE's
17 applications. Thank you.

18 COUNCIL CHAIR: Thank you.

19 THE CLERK: Tracy Tallman, followed by
20 Kathryn ZuFall.

21 COUNCIL CHAIR: Good afternoon.

22 MS. TALLMAN: Hello. My name's Tracy
23 Tallman. I actually live in Edmonds at 24208 100th
24 Avenue West, but I own a piece of property down on
25 Richmond Beach Drive in the affected area that my --



1 has been in my family for over 50 years.

2 COUNCIL CHAIR: Thank you.

3 MS. TALLMAN: At page 10 of its appeal,
4 BSRE claims that it could not have produced the
5 evidence about the ordinary high-water mark in the
6 shoreline buffers at the May hearing. No, the record
7 says otherwise.

8 BSR- -- BSRE has had seven years to produce
9 the evidence and comply with the law. County code
10 requires that the ordinary high-water mark and
11 shoreline buffers be accurately depicted on the project
12 site plans. BSRE failed to do so three times. First,
13 when it submitted the site plans in 2- -- 2011; again,
14 in 2017; and again, in 2018.

15 Also, given that BSRE located the ordinary
16 high-water mark in March 2018, it is incredulous for
17 BSRE to say that it could not have produced the
18 evidence about the ordinary high-water mark and the
19 shoreline buffers at the hearing held two months later
20 in May. There is no excuse for BSRE's dilatory
21 conduct.

22 My remaining comments relate to page 5 of
23 BSRE's September 14th rebuttal filing and the recently
24 discovered flaw discussed in Mr. McCormick's
25 September 7th memorandum. On page 2 of my handout,



1 you'll find a screenshot of BSRE's 2011 site plans
2 copied from Mr. -- from McCormick's memorandum. It
3 shows that the 150-foot and 200-foot buffers were
4 improperly measured from the mean higher high-water
5 line when BSRE was supposedly -- supposed to measure
6 the buffers from the ordinary high-water mark.

7 My focus, however, is on something else. The
8 screenshot shows that BSRE plotted the improperly used
9 mean high -- higher high-water line incorrectly: a
10 double whammy. The mean higher high-water line's
11 elevation is shown to be 8.61 feet. Yet, that one, the
12 red one, is plotted as being between is 6-foot and
13 8-foot contour lines. With an elevation of 8.61 feet,
14 it should be plotted between the 8-foot and the 10-foot
15 contour lines.

16 This is a huge error. If plotted correctly,
17 the shoreline buffers would be 30 to 50 foot farther
18 inland. This error is further evidence of BSRE's
19 glaring lack of diligence.

20 In its rebuttal filing, BSRE says that, quote:
21 McCormick has no support for this allegation, unquote.
22 Is that all BSRE can say? Look for yourself. The
23 support is right here -- right there on the screenshot.
24 An honest developer would have admitted its mistake
25 once it was brought to its attention.



1 And there is another problem: more
2 carelessness. The screenshot shows an elevation of
3 8.61 feet, but BSRE's site plans submitted as
4 Exhibit V-7 in April 2018 show an elevation -- the
5 elevation as 8.84 feet. Which is it?

6 BSRE's conduct has been suspect all along.
7 Its lack of diligence is astonishing. Please affirm
8 the -- the hearing examiner's denial of BSRE's
9 application. And please don't destroy the Richmond
10 Beach area and the city of -- the town of Woodway.

11 COUNCIL CHAIR: Thank you.

12 THE CLERK: Catherine ZuFall, followed by
13 Tom Mailhot.

14 COUNCIL CHAIR: Good afternoon. If you
15 could give your name and address for the record.

16 MS. ZuFALL: Kathryn ZuFall, 2420
17 Northwest 201st Place in Shoreline, 98177.

18 COUNCIL CHAIR: Thank you.

19 MS. ZuFALL: Okay. Good afternoon. First
20 of all, thank you for listening to all of us with so
21 much patience. I certainly appreciate it.

22 I am a party of record, and my comments relate
23 to page 30 of the BSRE's appeal regarding the short
24 plat application. BSRE would like its short plat
25 application to be excluded from the decision by the



1 hearing examiner. BSRE is wrong. It's application is
2 inextricably intertwined with its other applications,
3 and it suffers from many of the same deficiencies.

4 It's original short plat application in
5 Exhibit A-2 says that it's proposed short plat is,
6 quote, to support furture[phonetic] -- future urban
7 center redevelopment. Please see Exhibit A-34, the
8 updated short plat checklist that BSRE submitted five
9 months ago. It includes required items that are also
10 required for its other applications, including site
11 plans, proposed roads and open space, geologically
12 hazardous areas, proposed buffers and setbacks, a
13 critical area study, a geotechnical report,
14 hydrogeologic report, traffic studies, and a
15 transportation demand management offer to which BSRE
16 added a handwritten notation saying, quote: Part of
17 UDC app. All of these items show the short plat
18 application's obvious and direct connections to BSRE's
19 other applications, and it clearly does not, quote,
20 stand alone, unquote.

21 The short plat items also show substantial
22 code conflicts and deficiencies. For example,
23 regarding the geotechnical report, the examiner
24 concluded in paragraph C.70 that, quote, the failure of
25 the geotechnical report to confirm the site's



1 suitability for the proposed development remains
2 substantially in conflict with county code. BSRE has
3 not complied with the requirement that buffers and
4 setbacks be identified.

5 Their short plat site plans in Exhibit B-9 are
6 also noncompliant because they incorrectly depict the
7 150-foot and 200-foot shoreline buffers in ten of its
8 submitted sheets, measuring them incorrectly, as stated
9 previously, from the mean high-water line rather than
10 the ordinary high-water mark. The examiner concluded,
11 in paragraph C.72, that all of their applications
12 measured the buffers this way. This has resulted in a
13 substantial code conflict with some buildings intruding
14 on the true and correct shoreline buffer zones.

15 The examiner acted properly in denying and
16 terminating BSRE's short plat application, along with
17 their other applications. Please affirm the examiner's
18 decision in denying all of the applications. Thanks so
19 much for your time.

20 COUNCIL CHAIR: Thank you.

21 THE CLERK: Tom Mailhot, followed by Bill
22 Krepick.

23 COUNCIL CHAIR: Good afternoon. If you
24 could give your name and address for the record.

25 MR. MAILHOT: Good afternoon. My name is



1 Tom Mailhot. I am a resident of Shoreline at
2 2432 Northwest 201st Place.

3 COUNCIL CHAIR: Thank you.

4 MR. MAILHOT: Hello, Councilmembers. I'm
5 a party of record. My comments relate to pages 23
6 through 27 of BSRE's appeal. BSRE is arguing that the
7 hearing examiner should have granted its request for an
8 extension. It asserts that it's -- it has been
9 diligent and deserves an extension.

10 BSRE specifically con- -- contests the
11 examiner's conclusion at C.12 that, quote, a glaring
12 example of BSRE's failure to prosecute its applications
13 diligently is its failure to ascertain the ordinary
14 high-water mark until late spring 2018, close quote.
15 BSRE claims that for the last seven years, it didn't
16 know it was doing anything wrong when determining where
17 the fif- -- 150-foot buffer and other shoreline buffers
18 are located.

19 What? Is that because nobody told them that?
20 Is that because they couldn't be bothered to read the
21 code? What's the likelihood that a -- for a billion
22 dollar project, spending over \$10 million on this, that
23 they couldn't read and apply a very simple code
24 provision? Does that sound like a truthful and
25 diligent developer?



1 And how could anyone believe BSRE's story on
2 the ordinary high-water mark when it submitted plans in
3 April 2018 that identified the ordinary high-water mark
4 with a note that the mark had been located in
5 March 2018. It's Exhibit B-7, page EX2. The circled
6 green is their note; that's the ordinary high-water
7 mark.

8 They knew the shoreline buffers are to be
9 measured from that mark. Yet, even with the correct
10 mark finally showing on the plans, the shoreline
11 buffers were still measured from the one -- wrong mark.
12 Why didn't BSRE at least tell PDS that there was an
13 issue with the shoreline buffers that needed to be
14 corrected? Does that sound like a truthful and --
15 truthful and diligent developer?

16 BSRE contests the examiner's conclusion at
17 C-12 that BSRE exhibited a lack of diligence in
18 desultory approach to obtaining Sounder service
19 justifying a 90-foot hote- -- height bonus. BSRE
20 claims it was as diligent as it could be and took all
21 available steps available. Sound Transit says the
22 board heard nothing from BSRE between 2014 and
23 May 2018. That's Exhibit H-30. Is that diligent or is
24 that desultory.

25 Consider BSRE's attempts to wiggle out of the



1 second access road requirement. After ignoring the
2 requirement in their original plans, being notified
3 multiple times that a second road was needed, trying to
4 claim a second record was not warranted -- that's
5 Exhibit C-21 -- and after stalling for six years, BSRE
6 finally submitted incomplete and noncompliant plans in
7 2017 -- 2017.

8 How is that diligent and truthful? If BSRE
9 was diligent, why did it take four years to respond to
10 any of the 42 issues that PDS raised in its 2013
11 completion letter? And why did BSRE fail to even start
12 to address half of those issues and only partially
13 address another one-third of them? BSRE addressed just
14 one of those 42 issues completely. I don't think any
15 teacher would regard completing one assignment out of
16 42 as a sign of diligence.

17 I trust that you will agree with the hearing
18 examiner's conclusion that BSRE has not been diligent,
19 and that it's request for another extension of its
20 application expiration date was appropriately denied.
21 Thank you.

22 COUNCIL CHAIR: Thank you.

23 THE CLERK: Bill Krepick, followed by
24 Jerry Patterson.

25 COUNCIL CHAIR: Thank you. Give your name



1 and address for the record. You have three minutes.

2 MR. KREPICK: Yes. Bill Krepick at
3 11402 239th Place Southwest in Woodway, 98020.

4 COUNCIL CHAIR: Thank you.

5 MR. KREPICK: And I'm a party of record.
6 My comments relate to BSRE's appeal wherein they claim
7 that they were not given an opportunity to justify why
8 21 buildings in their project application are over
9 90 feet tall and why they believe that they have
10 satisfied the code, which states that proximity to mass
11 transit allows them to build 180-foot towers.

12 As the examiner said in paragraph C.37, BSRE's
13 bare proposal for buildings twice the permitted might
14 does not demonstrate either necessity or desirability.
15 The additional height must be, quote, for some reason
16 other than the applicant's desire. The record lacks
17 any evidence that the additional height is necessary or
18 desirable from a public, aesthetic, planning, or
19 transportation standpoint.

20 I won't repeat the points made by Speaker 5
21 about the necessary or desirable issue of the 90-foot
22 buildings other than to say that BSRE has had more than
23 adequate time and prior extensions to resolve density
24 and transportation issues with neighboring the towns of
25 Woodway and the city of Shoreline.



1 Nowhere have I seen or heard a single resident
2 or a single government leader in Woodway, Edmonds,
3 Richmond Beach, Shoreline who supports the scale and
4 the scope of the BSRE project. As far as I know,
5 there's not a single real estate development north of
6 downtown Seattle adjacent to Puget Sound that has any
7 buildings that are more than 60 feet tall. It is no
8 wonder there is no support for BSRE's Point Wells
9 project, and it is, therefore, impossible for BSRE to
10 demonstrate that building heights over 90 feet are
11 necessary or desirable.

12 BSRE's claim that the code permits buildings
13 up to a 180 feet tall because the project is proximate
14 to mass transit is also false. BSRE has failed to
15 satisfy this code section as other speakers have stated
16 and as Tom McCormick clearly explained in his memo to
17 the council on May 15th of this year.

18 In addition, there is no commitment from
19 Burlington Northern, nor from Sound -- Sounder Transit
20 to build a mass transit station at Point Wells. But
21 more importantly, the Sounder train schedule, with four
22 commuter trains in the morning and four in the evening,
23 is not at all adequate to support effective
24 high-capacity mass transit. By not having a true
25 mass-transit solution for Point Wells, BSRE fails to



1 meet code and is forcing an unsupportable and unsafe
2 traffic overload on the single two-lane access road
3 through Richmond Beach.

4 One of the primary responsibilities of judges
5 and hearing examiners is to interpret the law and then
6 apply it to the facts. The examiner did just that and
7 made the correct decision to deny BSRE's application.
8 Bu- -- buildings taller than 90 feet at Point Wells are
9 neither necessary, nor desirable, and buildings of
10 180 feet are not permitted.

11 So I would ask you to support the examiner's
12 decision. He correctly denied BSRE's applications.
13 Please confirm the denial. Thank you very much.

14 COUNCIL CHAIR: Thank you.

15 THE CLERK: Jerry Patterson, followed by
16 Carla Nichols.

17 COUNCIL CHAIR: If you'd give your name
18 and address for the record, you have three minutes.
19 Good afternoon.

20 MR. PATTERSON: Good afternoon. Jerry
21 Patterson, again; 20420 Richmond Beach Drive in
22 Shoreline, speaking for myself just for a few moments.

23 In 2010, BSRE signed an agreement with
24 ALON Oil for \$35 million in revenue going to BSRE.
25 Over the last ten years, the community, the county



1 council and your staff has invested several-million
2 dollars of staff time and legal resources in
3 the face of BSRE having a ten-year contract, through
4 2020, generating a total of \$35 million.

5 I ask you, on behalf of the community, the
6 taxpayers, and the staff to please respect the
7 decisions made by your staff, and the hearing examiner,
8 plus all the facts that have been documented this
9 afternoon and affirm the decision of the hearing
10 examiner. Thank you very much.

11 COUNCIL CHAIR: Thank you.

12 THE CLERK: Carla Nichols, followed by
13 Julie Taylor.

14 COUNCIL CHAIR: Good afternoon.

15 MS. NICHOLS: Good afternoon.

16 COUNCIL CHAIR: Give your name and address
17 for the record.

18 MS. NICHOLS: Yes. My name is Carla
19 Nichols. My address is 22440 Dogwood Lane, Woodway.

20 COUNCIL CHAIR: Thank you.

21 MS. NICHOLS: I've actually lived at that
22 address -- I figured it out -- 27 years so I've been
23 following this issue for a long time, and there's been
24 an extensive record associated with this appeal.

25 I come with just conclusions. The Town of



1 Woodway supports the County's Planning and Development
2 staff's recommendations and report. And further, the
3 Town of Woodway supports the decision that the hearing
4 examiner made. I don't think I need to repeat what's
5 been carried on today.

6 Please deny this appeal. Thank you.

7 COUNCIL CHAIR: Thank you.

8 THE CLERK: The last name on the list is
9 Julie Taylor.

10 COUNCIL CHAIR: Good afternoon. If you
11 could give your name and address for the record, you
12 have three minutes.

13 MS. TAYLOR: Julie Taylor. I'm Assistant
14 City Attorney, City of Shoreline, 17500 Midvale Avenue
15 North, Shoreline, 98133.

16 COUNCIL CHAIR: Thank you.

17 MS. TAYLOR: Good afternoon, members of
18 the council. I hadn't intended to be the last on the
19 list and play cleanup here. And I had some prepared
20 comments, but as Mayor Nichols noted, the citizens that
21 have spoken to you throughout the day representing
22 citizens in the Richmond Beach area of the city of
23 Shoreline and in the town of Woodway and town of
24 Edmonds, actually, as well, have spoken to the
25 substantial conflicts that the hearing examiner found



1 with the BSRE application. And for that reason, the
2 City of Shoreline concurs with them and asks you to
3 uphold that hearing examiner's decision.

4 But we would like to note, too, that the City
5 of Shoreline, as the municipality that will be most
6 impacted, if not solely impacted, by any development
7 that occurs at Point Wells, is that just because the
8 County -- and I'll use the word "erroneously" zoned
9 this area for an urban center designation -- it's been
10 stripped of that since that time -- doesn't mean that
11 an urban center development can actually occur on the
12 site. Just 'cause property's zoned for a use doesn't
13 necessarily mean the highest and maximum use under that
14 zoning district can actually occur within the zone.

15 Here, as you heard from the testimony from
16 your own planning department before the hearing
17 examiner that's in the record, the hearing examiner's
18 decision, and the citizens today, substantial conflicts
19 that arise from BSRE's project is trying to put the
20 proverbial square peg in a round hole. And that's
21 what's being happening today [verbatim].

22 I do want to touch on one of the main concerns
23 that the City has, which is, of course, the traffic and
24 information in the record provided by our traffic
25 engineer, our attempts with BSRE to remedy traffic



1 mitigation, which has moved to an impasse, according to
2 our engineer because, like the County, we have had a
3 problem with being able to get accurate and reliable
4 information from BSRE on how their project will be
5 impacted and how we can resolve some of the traffic
6 that will be flowing through Shoreline's transportation
7 network.

8 I'd also like to note that we concur with the
9 high-capacity transit analysis that the mere fact that
10 Point Wells has a rail line that passes through it does
11 not make that rail line accessible to residents of the
12 site. Sound Transit, BN- -- Burlington Northern has
13 entered no type of agreements. And the mere fact that
14 BSRE may want to say they will pony up the money to
15 build the station at Point Wells negates the fact that
16 there's long-term operational cost for that rail to
17 continue through there -- it's just not the cost of
18 building a station -- and that comes if taxpayers. And
19 there's nothing within any of the ST-1, ST-2, or ST-3
20 proposals that are funded by taxpayers now that will
21 cover any kind of operational expenses for a rail
22 station there.

23 So, in conclusion, I'd just like to say the
24 City of Shoreline would like you to affirm and uphold
25 the hearing examiner's decision. Both the planning



1 department and the hearing examiner found substantial
2 conflict with Snohomish County Code, and you should
3 uphold their decision as well.

4 COUNCIL CHAIR: Thank you. And just to
5 confirm that was the end of the sign-up sheet, okay?
6 But if we have any other parties of record that have
7 not spoken that wish to speak? Any other parties of
8 record that want to provide testimony? Just want to
9 make sure we've got everybody.

10 Okay. There are no others. We will again
11 return to the appellant and -- for a five minute
12 rebuttal.

13 MS. ST. ROMAIN: Hi. So in this brief
14 moment, I just want to go over a few of the topics that
15 were brought up that I didn't address earlier.

16 And first I wanted to start with a note: This
17 is not a final project. The hearing before the hearing
18 examiner was not on a final approval of a project.
19 Instead, BSRE simply requested additional time in order
20 to have the environmental impact statement drafted.
21 There would be substantial time for any revisions that
22 were necessary based on the determination of the
23 environmental impact statement. So small issues, like
24 whether the additional height was necessary or
25 desirable, certainly had additional time to be



1 determined through the continuing process of having the
2 environmental impact statement prepared, revised,
3 submitted to the public for comment and then finalized.

4 So the topic of high-capacity transit, while
5 it's clear that the people in this room are upset that
6 the -- the term "route" is included in the code, the
7 fact of the matter is that the term "route" or
8 "station" is included in the code. To ignore the word
9 "route" is making part of the statute superfluous and
10 meaningless, and that's not the way you interpret
11 statutes. The only plain-meaning reading of that
12 statute is to say there are two options: Either
13 location near a route or a station. Here, we've
14 demonstr- -- demonstrably proved we have proximity to a
15 high-capacity transit route.

16 With respect to the setback from the
17 low-density zones, the code provision related to the
18 setback specifically s- -- talks about certain zoning
19 designations. Those zoning designations are R-9,600,
20 R-8,400, R-7,200, T, or the LDMR zoning. The Point
21 Wells property is not located adjacent to any of those
22 sites. Therefore, that statute is not applicable to
23 this location.

24 On the secondary access road, BSRE has
25 complied with all requirements that the County has



1 provided regarding the secondary access road. This is
2 despite the fact that PDS has continuously moved the
3 goalpost with respect to the secondary access road. In
4 late 2015, PDS, for the first time, advised that a
5 secondary access road would be necessary, but they
6 didn't state whether that road had to be an emergency
7 access road or a full access road.

8 It wasn't until sometime in 2016 that PDS
9 finally determined that it had to be a full access
10 road. Once BSRE received that comment from the County,
11 it promptly got to work on providing the secondary
12 access road, and it provided information requested by
13 the County in the 2017 revisions showing the full
14 secondary access road, even despite the fact that the
15 access road is not actually within the Snohomish County
16 jurisdiction.

17 Finally, on the ordinary high-water mark, this
18 is not a substantial conflict. First of all, the
19 comment was not received for the first time until May
20 of 2018. In the April 2018 staff report, which was
21 received just two weeks before the May report, this was
22 not even issued. It was not even addressed. It was
23 not brought up as a possible substantial conflict. And
24 given the complexity of this project, this -- moving
25 the ordinary high-water mark as we've shown will lead



1 to maybe a loss of 6.5 percent of the units. Given the
2 size of this project, 6.5 percent of the units cannot
3 be considered a substantial conflict.

4 As we discussed at the hearing, BSRE's experts
5 located the ordinary high-water mark in March of 2018,
6 and they promptly began working on revisions
7 necessitated by that determination. But the focus of
8 BSRE's revisions at that time was in responding to the
9 substantial issues raised in the April 2018 comment
10 letter received by the County. And the ordinary
11 high-water mark comment was just not included in that
12 list.

13 It wasn't until May 9, 2018, that that comment
14 was received from the County, which was less than a
15 week before the hearing started. That did not provide
16 enough time for BSRE to put together a complete
17 response to that issue.

18 For all of those reasons, and for the reasons
19 set forth in our briefing, we ask that you reverse the
20 hearing examiner's decision and find that BSRE's
21 applications are not in substantial conflict with the
22 code, that BSRE's entitled to an extension, and that
23 BSRE's projects are vested to the 30.34A.180 code
24 provision. Thank you.

25 COUNCIL CHAIR: Thank you.



1 Okay. That completes the oral argument
2 portion, so we are closing the oral argument portion of
3 the hearing to remove it to council discussion, and
4 we're actually going to take the council into an
5 executive session for 15 minutes, poten- -- and
6 potential action to follow. Okay?

7 MALE VOICE: [As read].

8 COUNCIL CHAIR: Yes. We will -- you can
9 stay. We're going to go to our book conference room.

10 (Recess taken.)

11 COUNCIL CHAIR: Okay. We are back from
12 our executive session. At this point, we're going to
13 move into discussion and we're going to be giving
14 direction to our staff to prepare a motion. So I'm
15 going to suggest that we go through this -- we have
16 12 -- or, pardon me, 16 different issues, and that the
17 council moves through these one by one, and so we can
18 discuss and give direction one issue at a time.

19 So being said, Yorik, if you could walk u- --
20 or take us through the first issue.

21 MR. STEVENS-WAJDA: Sure.

22 Councilmember Low, did you want to open the --

23 COUNCILMEMBER LOW: Yes. I'd --

24 MR. STEVENS-WAJDA: -- overall --

25 COUNCILMEMBER LOW: -- like to make a



1 motion to direct council staff to draft a motion
2 consistent with our decision that we discussed.

3 MR. STEVENS-WAJDA: Okay.

4 COUNCILMEMBER LOW: Okay?

5 MR. STEVENS-WAJDA: So, as Chair Wright
6 mentioned, I'll walk through the 16 -- the specific
7 grounds for appeal that I laid out in my council staff
8 report.

9 The first one we have here is related to
10 application of residential setbacks -- and you can find
11 those grounds for appeal on pages 6 to 7 of the appeal
12 brief, Exhibit S-1 -- and the first one is that the
13 hearing examiner committed an error of law in applying
14 Snohomish County Code Section 30.34A.040
15 subsection (2), which limits building heights adjacent
16 to certain residential zones to this project.

17 COUNCIL CHAIR: Okay. Are there any
18 questions, comments or a motion?

19 COUNCILMEMBER LOW: I'd like to make a
20 motion to move to direct council staff to prepare a
21 written motion that affirms the hearing examiner on
22 Issue 1.

23 COUNCILMEMBER SULLIVAN: Second.

24 COUNCIL CHAIR: Okay. There's a motion
25 and a second? Any discussion?



1 Okay. Seeing none, all those in favor?

2 COUNCILMEMBERS: Aye.

3 COUNCIL CHAIR: The Chair votes aye.

4 Opposed? It passes four-zero.

5 MR. STEVENS-WAJDA: Okay. No. 2, on that
6 same topic, the hearing examiner failed to follow
7 applicable procedures by ignoring project changes
8 submitted by BSRE to the hearing examiner in response
9 to deficiencies identified in the June 29th decision
10 regarding residential setbacks.

11 COUNCIL CHAIR: Thank you. Any questions
12 or comments from council?

13 COUNCILMEMBER LOW: I move to direct
14 council staff to prepare a written motion that affirms
15 the hearing examiner on Issue 2.

16 COUNCILMEMBER SULLIVAN: Second.

17 COUNCIL CHAIR: Okay. There's a motion
18 and a second? Is there any discussion?

19 Okay. Seeing none, all those in favor?

20 COUNCILMEMBERS: Aye.

21 COUNCIL CHAIR: The Chair votes aye.

22 Opposed? That item passes four-zero.

23 MR. STEVENS-WAJDA: Okay. Issue No. 3 is
24 a related to delineation of ordinary high-water mark.
25 You can see that those grounds for appeal are pages 8



1 to 11 of Exhibit S-1. Number -- Issue No. 3 is that
2 the hearing examiner committed an error of law and
3 issued findings and conclusions not supported by the
4 record with respect to BSRE's lack of diligence in
5 delineating the ordinary high-water mark under
6 Snohomish County Code Section 30.62A.320.

7 COUNCIL CHAIR: Thank you. Any comments
8 or questions from council?

9 COUNCILMEMBER LOW: I move to direct
10 council staff to prepare a written motion that affirms
11 the hearing examiner on Issue 3.

12 COUNCILMEMBER SULLIVAN: Second.

13 COUNCIL CHAIR: Okay. A motion and a
14 second? Discussion?

15 Okay. Seeing none, all those in favor?

16 COUNCILMEMBERS: Aye.

17 COUNCIL CHAIR: The Chair votes aye.
18 Opposed? It passes four-zero.

19 That brings us to Issue 4.

20 MR. STEVENS-WAJDA: Okay. Issue 4, again
21 with the ordinary high-water mark: The hearing
22 examiner failed to follow applicable procedure by
23 ignoring additional information and changes submitted
24 by BSRE to the hearing examiner in response to
25 deficiencies identified in the June 29th decision



1 regarding the delineation of ordinary high-water mark.

2 COUNCIL CHAIR: Thank you. Any comments
3 or questions from council? Okay.

4 COUNCILMEMBER LOW: I move to direct
5 council staff to prepare a written motion that affirms
6 the hearing examiner on Issue 4.

7 COUNCILMEMBER SULLIVAN: Second.

8 COUNCIL CHAIR: A motion and a second?
9 Any discussion?

10 Seeing none, all those in favor?

11 COUNCILMEMBERS: Aye.

12 COUNCIL CHAIR: The Chair votes aye.
13 Opposed? It passes four-zero.

14 That brings us to Issue 5.

15 MR. STEVENS-WAJDA: Okay. Issue 5 relates
16 to innovative development design. You can see pages 11
17 to 13 of the appeal brief. The hearing examiner failed
18 to follow applicable procedure by ignoring additional
19 information and changes submitted by BSRE to the
20 hearing examiner in response to deficiencies identified
21 in the June 29th decision regarding the use of
22 innovative development design to protect critical area
23 functions and values.

24 COUNCIL CHAIR: Thank you. Any questions
25 or comments from council?



1 Okay. Seeing none...

2 COUNCILMEMBER LOW: I move to direct
3 council staff to prepare a written motion that affirms
4 the hearing examiner on Issue 5.

5 COUNCILMEMBER SULLIVAN: Second.

6 COUNCIL CHAIR: Okay. A motion and a
7 second? Any discussion?

8 Seeing none, all those in favor?

9 COUNCILMEMBERS: Aye.

10 COUNCIL CHAIR: The Chair votes aye.
11 Opposed? It passes four-zero.

12 That brings us to Issue 6.

13 MR. STEVENS-WAJDA: Okay. The next four
14 address high-capacity transit, and you can find that
15 topic on pages 13 to 19 of the appeal brief. Issue
16 No. 6 grounds for appeal is that the hearing examiner
17 committed an error of law by concluding that additional
18 building height and development capacity permitted
19 through proximity to high-capacity transit pursuant to
20 former Snohomish County Code Section 30.34A.040 from
21 2010 does not apply to this project.

22 COUNCIL CHAIR: Thank you. Any questions
23 or comments from council? Okay. Seeing none...

24 COUNCILMEMBER LOW: I move to direct
25 council staff to prepare a written motion that affirms



1 the hearing examiner on Issue 6.

2 COUNCILMEMBER SULLIVAN: Second.

3 COUNCIL CHAIR: Okay. A motion and a
4 second? Any discussion?

5 Seeing none, all those in favor?

6 COUNCILMEMBERS: Aye.

7 COUNCIL CHAIR: The Chair votes aye.
8 Opposed? It passes four-zero.

9 That bring us to Issue 7.

10 MR. STEVENS-WAJDA: Okay. Issue No. 7:
11 The hearing examiner issued findings and conclusions
12 that were not supported by the record regarding a lack
13 of commitment by Sound Transit or Community Transit to
14 provide passenger rail or bus rapid transit service to
15 the project site.

16 COUNCIL CHAIR: Thank you. Any comments
17 or questions from council? Okay. Seeing none...

18 COUNCILMEMBER LOW: I move to direct
19 council staff to prepare a written motion that affirms
20 the hearing examiner on Issue 7.

21 COUNCILMEMBER SULLIVAN: Second.

22 COUNCIL CHAIR: Okay. A motion and a
23 second? Any discussion?

24 Seeing none, all those in favor?

25 COUNCILMEMBERS: Aye.



1 COUNCIL CHAIR: The Chair votes aye.
2 Opposed? It passes four-zero.

3 That brings us to Issue 8.

4 MR. STEVENS-WAJDA: Issue No. 8 is the
5 grounds for appeal that the hearing examiner issued
6 findings and conclusions that were not supported by the
7 record regarding the potential for passenger ferry or
8 water taxi service to the project side.

9 COUNCIL CHAIR: Thank you. Any comments
10 or questions from council? Okay. Seeing none...

11 COUNCILMEMBER LOW: I move to direct
12 council staff to prepare a written motion that affirms
13 the hearing examiner on Issue 8.

14 COUNCILMEMBER SULLIVAN: Second.

15 COUNCIL CHAIR: Okay. A motion and a
16 second? Any discussion?

17 Seeing none, all those in favor?

18 COUNCILMEMBERS: Aye.

19 COUNCIL CHAIR: The Chair votes aye.
20 Opposed? It passes four-zero.

21 That brings us to Issue 9.

22 MR. STEVENS-WAJDA: Issue 9, the final one
23 for the high capacity transit topic, the grounds for
24 appeal is that the hearing examiner committed an error
25 of law by concluding that the application did not



1 document the necessity or desirability of additional
2 height and development capacity permitted through
3 proximity to high-capacity transit pursuant to
4 Snohomish County Code 30.34A.040 from 2010.

5 COUNCIL CHAIR: Thank you. Any comments
6 or questions from council? Okay. Seeing none.

7 COUNCILMEMBER LOW: I move to direct
8 council staff to prepare a written motion that affirms
9 the hearing examiner on Issue 9.

10 COUNCILMEMBER SULLIVAN: Second.

11 COUNCIL CHAIR: A motion and a second?
12 Any discussion?

13 Seeing none, all those in favor?

14 COUNCILMEMBERS: Aye.

15 COUNCIL CHAIR: The Chair votes aye.
16 Opposed? It passes four-zero.

17 That brings us to Issue No. 10.

18 MR. STEVENS-WAJDA: The next three grounds
19 for appeal relate to landslide deviations requests.
20 You can find that on pages 20 to 23 of the appeal
21 Brief. No. 10 is that the hearing examiner committed
22 an error of law by finding substantial conflict with
23 county code regarding landslide hazards while a
24 landslide deviation request was pending.

25 COUNCIL CHAIR: Thank you. Any comments



1 or questions from council? Okay. Seeing none...

2 COUNCILMEMBER LOW: I move to direct
3 council staff to prepare a written motion that affirms
4 the hearing examiner on Issue No. 10.

5 COUNCILMEMBER SULLIVAN: Second.

6 COUNCIL CHAIR: Okay. A motion and a
7 second? Any discussion?

8 Okay. Seeing none, all those in favor?

9 COUNCILMEMBERS: Aye.

10 COUNCIL CHAIR: The Chair votes aye.
11 Opposed? It passes four-zero.

12 And that brings us to Issue 11.

13 MR. STEVENS-WAJDA: Okay. Grounds for
14 Appeal No. 11 is that the hearing examiner issued
15 findings and conclusions that were not supported by the
16 record regarding landslide hazards.

17 COUNCIL CHAIR: Thank you. Any comments
18 or questions from council? Okay. Seeing none...

19 COUNCILMEMBER LOW: I move to direct
20 council staff to prepare a written motion that affirms
21 the hearing exam- -- examiner on Issue 11.

22 COUNCILMEMBER SULLIVAN: Second.

23 COUNCIL CHAIR: Okay. A motion and a
24 second? Any discussion?

25 Seeing none, all those in favor?



1 COUNCILMEMBERS: Aye.

2 COUNCIL CHAIR: The Chair votes aye.
3 Opposed? It passes four-zero.

4 That brings us to Issue 12.

5 MR. STEVENS-WAJDA: Grounds for Appeal
6 No. 12 is that the hearing examiner failed to follow
7 applicable procedure by ignoring additional information
8 and changes submitted by BSRE to the hearing examiner
9 in response to deficiencies identified in the June 29th
10 decision regarding landslide hazards.

11 COUNCIL CHAIR: Thank you. Any comments
12 or questions from council? Okay. Seeing none...

13 COUNCILMEMBER LOW: I move to direct
14 council staff to prepare a written motion that affirms
15 the hearing examiner on Issue 12.

16 COUNCILMEMBER SULLIVAN: Second.

17 COUNCIL CHAIR: Okay. A motion and a
18 second? Any discussion?

19 Seeing none, all those in favor?

20 COUNCILMEMBERS: Aye.

21 COUNCIL CHAIR: The Chair votes aye.
22 Opposed? It passes four-zero.

23 That brings us to Issue 13.

24 MR. STEVENS-WAJDA: The next two issues
25 relate to the application expiration deadline



1 extension, and you can find those issues briefed on
2 pages 23 to 27 of Exhibit S-1. Issue No. 13 is that
3 the hearing examiner issued findings and conclusions
4 that were not supported by the record regarding whether
5 BSRE should be granted an extension of the application
6 expiration deadline.

7 COUNCIL CHAIR: Thank you. Any comments
8 or questions from council? Okay. Seeing none...

9 COUNCILMEMBER LOW: I move to direct
10 council staff to prepare a written motion that affirms
11 the hearing examiner on Issue 13 but finds that
12 Findings F.21 and F.31 are, in part, not supported by
13 substantial evidence and modifies Finding F.21 to
14 strike the last two sentences and modifies Finding F.31
15 to cite Exhibit K-31 in footnote 11 instead of
16 Exhibit K-32.

17 COUNCILMEMBER SULLIVAN: Second.

18 COUNCIL CHAIR: Okay. There's a motion
19 and a second? Any discussion?

20 Seeing none, all those in favor?

21 COUNCILMEMBERS: Aye.

22 COUNCIL CHAIR: The Chair votes aye.
23 Opposed? It passes four-zero.

24 That brings us to Issue 14.

25 MR. STEVENS-WAJDA: Just a moment. Okay.



1 Issue 14, the grounds for appeal is that the
2 hearing examiner failed to follow applicable procedure
3 by ignoring additional information and changes
4 submitted by BSRE to the hearing examiner in response
5 to deficiencies identified in the June 29th decision
6 regarding extension of the application expiration
7 deadline.

8 COUNCIL CHAIR: Thank you. Any comments
9 or questions from council? Okay. Seeing none...

10 COUNCILMEMBER LOW: I move to direct
11 council staff to prepare a written motion that affirms
12 the hearing examiner on Issue No. 14.

13 COUNCILMEMBER SULLIVAN: Second.

14 COUNCIL CHAIR: Okay. A motion and a
15 second? Any discussion?

16 Seeing none, all those in favor?

17 COUNCILMEMBERS: Aye.

18 COUNCIL CHAIR: The Chair votes aye.
19 Opposed? It passes four-zero.

20 That brings us to Issue 15.

21 MR. STEVENS-WAJDA: Okay. Issue 15
22 concerns the ability to refile and reactivate the
23 application under former code. The grounds for appeal
24 is that the hearing examiner committed an error of law
25 with respect to whether BSRE is entitled to refile its



1 application pursuant to former Snohomish County
2 Code 30.34A.180 subsection (2), sub-subsection (f) from
3 2007.

4 COUNCIL CHAIR: Thank you. Any comments
5 or questions from council? Okay. Seeing none...

6 COUNCILMEMBER LOW: I move to direct
7 council staff to prepare a written motion that affirms
8 the hearing examiner on Issue No. 15.

9 COUNCILMEMBER SULLIVAN: Second.

10 COUNCIL CHAIR: A motion and a second?
11 Any discussion?

12 Seeing none, all those in favor?

13 COUNCILMEMBERS: Aye.

14 COUNCIL CHAIR: The Chair votes aye.
15 Opposed? It passes four-zero.

16 And that brings us to Issue 16.

17 MR. STEVENS-WAJDA: Okay. The final issue
18 regards inclusion of the short plat application in the
19 denial. The grounds for appeal -- you can find this on
20 page 30 of exhibit S-1. The grounds for appeal is that
21 the hearing examiner committed an error of law by
22 including BSRE's Short Plat Application
23 No. 11-101007 SP in the denial of applications in the
24 amended decision.

25 COUNCIL CHAIR: Thank you. Any comments



1 or questions from council? Okay. Seeing none...

2 COUNCILMEMBER LOW: I move to direct
3 council staff to prepare a written motion that affirms
4 the hearing examiner on Issue 16.

5 COUNCILMEMBER SULLIVAN: Second.

6 COUNCIL CHAIR: Okay. A motion and a
7 second? Any discussion?

8 Seeing none, all those in favor?

9 COUNCILMEMBERS: Aye.

10 COUNCIL CHAIR: The Chair votes aye.
11 Opposed? It passes four-zero.

12 Now, if we could ask you to read that back and
13 kind of confirm what we have.

14 MR. STEVENS-WAJDA: Absolutely. Be happy
15 to. So what I have is of the 16 -- the notes I took
16 here: Of the 16 issues that were laid out in the
17 council staff report, the direction to me to prepare a
18 written motion is affirming the hearing examiner on
19 Issues 1 through 12 and 14 through 16.

20 For issue 13, regarding the hearing
21 examiner -- the grounds for appeal that the hearing
22 examiner issued findings and conclusions that were not
23 supported by the record regarding whether BSRE should
24 be granted an extension of the application expiration
25 deadline, the written motion should affirm the hearing



1 examiner on that issue but find that Findings F.21 and
 2 F.31 are, in part, not supported by substantial
 3 evidence, modify Finding F.21 to delete the last two
 4 sentences and modify Finding F.31 to cite Exhibit K-31
 5 instead of Exhibit K-32.

6 Does that sound right?

7 (Discussion held off the record.)

8 MR. STEVENS-WAJDA: I would like to get
 9 clarification from the council that, with those
 10 findings modify -- with the modification of those
 11 findings that the -- modification of the findings that
 12 the findings -- say that again.

13 (Discussion held off the record.)

14 MR. STEVENS-WAJDA: That with the
 15 modification of those findings, that you affirm the
 16 hearing examiner overall conclusion to deny extension
 17 of the application expiration deadline?

18 COUNCIL CHAIR: Do we need a master
 19 motion?

20 MR. STEVENS-WAJDA: That is just regarding
 21 that issue 13. So I...

22 COUNCIL CHAIR: So we've given direction.
 23 Is that sufficient at this point, or how shall we
 24 schedule our final...

25 (Discussion held off the record.)



1 FEMALE VOICE: You're affirming that the
2 modification was correct?

3 COUNCIL CHAIR: Yes.

4 COUNCILMEMBER LOW: Okay. So while there
5 are parts of the two findings not supported by
6 substantial evidence, those errors are harmless in
7 light of the substantial evidence in the record that
8 supports the totality of the examiner's findings and
9 conclusions denying BSRE's request for an extension of
10 the application expiration.

11 I believe the examiner did not abuse his
12 discretion in denying extension and move that with the
13 modification of Findings F.21 and F.31, as previously
14 stated, that council will affirm the August 3, 2018,
15 decision of the hearing examiner and direct staff to
16 prepare a written motion to that effect.

17 COUNCILMEMBER SULLIVAN: Second.

18 COUNCIL CHAIR: Okay. A motion and a
19 second. Any discussion?

20 Seeing none, all those in favor.

21 COUNCILMEMBERS: Aye.

22 COUNCIL CHAIR: The Chair votes aye.
23 Opposed? It passes four-zero.

24 Okay. Given the late hour, I believe that we
25 would come back and ratify this at next Monday's



1 administrative session when we have all five
2 councilmembers. And I was remiss to not mention that
3 Councilmember Ryan had a conflict today but has
4 expressed a desire to listen to the record, watch the
5 hearing in totality, and weigh in next Monday.

6 COUNCILMEMBER LOW: Do we have a time for
7 that?

8 COUNCIL CHAIR: 10:30.

9 Shall we set it -- do we need a motion?

10 FEMALE VOICE: That would be good. And
11 I -- can I clarify one thing, please?

12 COUNCIL CHAIR: Absolutely.

13 FEMALE VOICE: Before Yorik started
14 talking about the issues, Councilmember Low had a
15 motion to direct staff. So was -- is that the same
16 motion that you just made?

17 COUNCILMEMBER LOW: Yeah.

18 FEMALE VOICE: Okay. Can you just
19 withdraw that first one?

20 COUNCILMEMBER LOW: I withdraw that first
21 one.

22 FEMALE VOICE: Thank you.

23 COUNCIL CHAIR: Okay. So do we need a
24 motion to...

25 FEMALE VOICE: Move to admin session



1 October 8th at 10:30.

2 COUNCILMEMBER LOW: So moved.

3 COUNCILMEMBER SULLIVAN: Second.

4 COUNCIL CHAIR: A motion and a second?

5 Any discussion?

6 Seeing none, all those in favor?

7 COUNCILMEMBERS: Aye.

8 COUNCIL CHAIR: The Chair votes aye.

9 Opposed? It passes four-zero.

10 Okay. Staff will put that motion together,
11 and we will take final action on Monday at our
12 administrative session at 10:30 a.m.

13 So we are adjourned for the day. Thank you,
14 all.

15 (Proceedings adjourned at 3:43 p.m.)

16 (Recording ends at 3:43 p.m.)

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TRANSCRIPTION CERTIFICATE

I, ELEANOR J. MITCHELL, the undersigned Certified Court Reporter in and for the State of Washington, do hereby certify:

That the foregoing transcript was transcribed under my direction; that the transcript is true and accurate to the best of my knowledge and ability to hear the audio; that I am not a relative or employee of any attorney or counsel employed by the parties hereto; nor am I financially interested in the event of the cause.

WITNESS MY HAND and DIGITAL SIGNATURE this 9th day of January, 2019.



ELEANOR J. MITCHELL, RPR
Washington Certified Court Reporter, CCR 3006
emitchell@yomreporting.com



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